QUID NOVI

Student-led Seminars

Special Edition

QUID NOVI

Journal des étudiant-e-s en droit de l'université McGill

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QUID NOVI

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WHAT'S INSIDE?
QUEL EST LE CONTENU?

WANT TO TALK?
TU VEUX T'EXPRIMER?

Envoyez vos commentaires ou articles avant jeudi 17h à l'adresse : quid.law@mcgill.ca

Toute contribution doit indiquer le nom de l'auteur, son année d'étude ainsi qu'un titre pour l'article. L'article ne sera publié qu'à la discrétion du comité de rédaction, qui basera sa décision sur la politique de rédaction.

Contributions should preferably be submitted as a **.doc** attachment (and not, for instance, a ".docx.").

Co-Editor in Chief

JÉRÉMY BOULANGER-BONNELLY

SÉMINAIRES ÉTUDIANTS ET BRUTALISATION

Les séminaires étudiants et la brutalisation: deux thèmes qui pourraient à prime abord sembler plutôt éloignés, voire totalement étrangers l'un à l'autre. Et pourtant, en recevant les articles cette semaine, j'ai constaté qu'un lien intéressant pourrait les unir et fournir une des pistes de réponse que nous cherchons depuis plusieurs semaines.

LA BRUTALISATION

Le débat sur la brutalisation fait rage dans nos pages depuis maintenant près de deux mois, signe de l'intérêt manifeste qu'au moins une partie de notre faculté lui porte. Les opinions divergent en partie, plusieurs reconnaissant l'existence du problème, et un autre auteur suggérant qu'il n'en est rien.

Cette semaine, le sujet refait surface, soulevé cette fois par un professeur de notre faculté. Vincent Forray déconstruit le phénomène pour mieux l'expliquer et surtout mieux le comprendre.

Encore une fois, il est difficile d'identifier des pistes de solution précises, vu la nature diffuse du problème. Cependant, un certain consensus semble se dégager des textes que nous avons publiés à l'effet que la brutalisation est un problème qui doit tout d'abord être reconnu, pour pouvoir ensuite être réglé, éventuellement.

Le texte du Professeur Forray est en ce sens une lueur d'espoir, reflétant la reconnaissance du problème au sein d'au moins une partie du corps professoral. Le doyen aurait également soulevé la question dans un de ses derniers "townhalls".

Et pourtant, toute lueur reste faible tant qu'elle n'est pas nourrie. Espérons donc que d'autres membres du corps professoral ou même de l'administration de notre faculté saisiront la balle au bond et partageront leur perspective sur ce débat.

LES SÉMINAIRES ÉTUDIANTS

Par ailleurs, cette édition est consacrée en partie au sujet chaud des séminaires étudiants. Comme vous le lirez dans les prochaines pages, les étudiants de la Faculté foisonnent d'idées plus ingénieuses les unes que les autres pour mener de tels cours.

Les sujets qu'ils se proposent d'aborder explorent d'ailleurs plusieurs lieux moins communs du droit, à l'image de la formation qui nous est offerte dans notre faculté. Adoptant la plupart du temps un angle critique, ces séminaires semblent repousser les frontières de la classe traditionnelle.

Hélas, la faculté semble réticente à plusieurs de ces projets. La présente édition se veut donc un plaidoyer en faveur de l'implantation de davantage de séminaires étudiants. Elle contient des propositions précises, mais également des articles à teneur plus générale expliquant les fondements et les bénéfices de ces initiatives.

Nous avons décidé de faire place à un tel sujet dans le Quid, car nous croyons nous aussi que la faculté et ses étudiants retireraient beaucoup à voir le nombre de séminaires étudiants augmentés.

LES SÉMINAIRES : UNE PISTE DE SOLUTION AU PROBLÈME DE LA BRUTALISATION ?

Un des bénéfices des séminaires étudiants pourrait justement être d'amenuiser les effets brutalisateurs de notre formation.

En effet, les séminaires sont donnés sous une forme d'enseignement souvent moins brutalisatrice que les cours magistraux. Le dialogue qui leur est propre laisse encore plus de place au développement de la pensée critique et à l'initiative des étudiants, minimisant ainsi l'effet de brutalisation décrié au fil des dernières semaines.

Il est certain que de tels séminaires ne sont pas l'unique moyen de régler le problème, mais parions que s'ils étaient acceptés en plus grand nombre, moins de nos étudiants sentiraient la pression des études en droit. Bref, c'est une piste de solution qui vaut la peine d'être explorée !

NB 1 : Vous aurez peut-être remarqué que le site web du Quid est désormais hébergé sous mon nom de domaine. Non, ce n'est pas un caprice narcissique de ma part ! C'est plutôt que notre site web ".mcgill.ca" a été attaqué par quelqu'un qui y a injecté un virus. Vu le manque de coopération total des services informatiques de McGill, et l'absence d'autre hébergement disponible, c'était la seule solution restante. En espérant que tout ça se règle prochainement !

NB 2 : Notre dernière édition de l'année sera le 9 avril prochain, si nous recevons suffisamment de textes. Préparez vos articles !

Professeur

JE SUIS CELA QUI BRUTALISE

Suis-je brutal ?

La question me tourmente depuis plusieurs semaines. Elle se pose même de manière plus incisive : comment suis-je brutal ? Car si quelque chose se dessine au fil des articles du Quid qui ont récemment abordé le thème, c'est que l'enseignement du droit dans notre Faculté implique une « brutalisation » des étudiants. Il ne s'agit donc pas de savoir si celui qui enseigne participe, oui ou non, à cette « brutalisation ». Mais plutôt de savoir, lorsque celle-ci est ressentie comme telle, dans quelle mesure il y participe, avec quels moyens et selon quels processus.

Il y aurait une forme de brutalité inévitable dans l'enseignement du droit. Monsieur Brosseau, madame Gibbs, messieurs Saucier Calderón et Boulanger-Bonnelly convergent sur ce point. Monsieur Shortt, quant à lui, rejette l'idée. Plus précisément, il estime que les éléments constitutifs de la « brutalisation » alléguée se trouvent contrebalancés par la flexibilité des méthodes d'enseignement et la diversité des points de vues caractéristiques de notre Faculté. De sorte que cette « brutalisation » n'a pas lieu. Je comprends alors que le principe de la « brutalisation » pourrait demeurer mais que ses effets sont neutralisés à McGill.

Le problème ne serait pas tant que l'apprentissage du droit suppose de subir, et d'infliger, certaines violences. Celles-ci constitueraient un mal nécessaire à l'étude. Le problème viendrait du surplus de violence. C'est, en particulier, la thèse soutenue par Saucier Calderón : l'enseignement du droit est suffisamment brutal par lui-même, pas la peine d'en rajouter. Or à McGill, inconsciemment ou non, on en rajouterait. De sorte que l'institution est interrogée sur la manière dont elle entend répondre des dommages infligés à certains de nos étudiants en raison de ce surplus de brutalité. Ce « supplément d'origine ».

Je n'entends pas revenir sur cette partition, tant elle me paraît indiquer un vécu auquel je ne me sens pas le droit de me rapporter. Je ne suis pas étudiant et ne saurais par conséquent faire l'expérience de la « brutalisation ». De celle-ci, je ne dois pouvoir connaître que ce que j'inflige. Je n'entends pas non plus me pencher sur les méthodes d'enseignement du droit à McGill étant, pour ainsi dire, un nouveau venu.

Je voudrais brièvement indiquer ce qui me semble le plus troublant dans cette affaire. À savoir la conscience d'une brutalité intrinsèque, indiscutable, qui ferait corps avec l'enseignement du droit. Dont chacun convient, à demi-mot, qu'il faut en prendre son parti pour devenir juriste. Ou, au minimum, l'existence d'une brutalité dont on juge qu'elle n'est pas si brutale.

Cela me trouble d'autant plus que je relevais, jusqu'à peu, d'un monde académique (les facultés de droit françaises) dans lequel la brutalité m'apparaît avoir été souvent institutionnalisée, canalisée au service de l'enseignement dogmatique dit « de masse » dans la forme du « cours magistral ». Lequel est impitoyable pour ceux qui n'acceptent pas d'encaisser une telle violence ; et dont on a pourtant pas démontré qu'il fait des juristes plus agiles. Bref : la faculté de droit, c'est pas pour les mauviettes (ni pour les poètes).

Je suis donc très reconnaissant aux auteures et auteurs Brosseau, Shortt, Gibbs, Saucier Calderón et Boulanger-Bonnelly d'adresser à tous une question dont la forme finale me heurte et qui mérite qu'on s'y arrête :

Quel est mon rôle dans cette inévitable « brutalisation » des étudiants qu'implique l'enseignement du droit ?

Chacun peut voir le problème. A partir du moment où l'éducation juridique à la Faculté requiert des modes de « brutalisation », de « re-socialisation », de « mutilation » ou de « transformation », quel que soit le terme employé, il y a violence – feutrée, enveloppée, métaphorique peut-être – mais violence tout de même. Il entrerait alors dans la fonction du professeur de droit d'organiser l'exercice de cette violence. Ou bien c'est que l'acte même d'enseigner le droit engage inconsciemment celui qui le pratique dans une forme de brutalité à l'égard des étudiants.

On ne saurait, évidemment, se contenter de répondre qu'il y a là quelque chose de normal, sans lequel l'enseignement, quel qu'il soit, ne pourrait avoir lieu. Le seul fait que des gens comme Brosseau, Shortt, Gibbs, Saucier Calderón et Boulanger-Bonelly aient pris la peine d'écrire désamorce ce genre de réponse.

Je prendrai donc pour acquis qu'un certain nombre d'étudiants souffrent des violences qui sont par ailleurs jugés

comme constitutives de l'enseignement du droit. Je me demande pourquoi ils souffrent, pourquoi cette souffrance s'exprime et comment je contribue à cette souffrance.

Je remarque d'abord, effectivement, que la violence constitue le phénomène juridique. Car la violence est d'abord la force qui s'exerce (du latin vis). Il est possible qu'à un moment, l'enseignement reprenne à son compte la force du droit. Ce moment serait celui de la pratique de la question.

Sur les points élémentaires, fondamentaux, sur les données techniques, sur ce « qu'on ne peut pas ne pas savoir », le questionnement du professeur se fait plus vif, plus énergique, plus brutal, parce qu'il vise le droit tel qu'il est. Sur le complexe, l'incertain, le sensible, sur ce qui, dans le droit, est sujet à controverse ou soulève de graves enjeux sociaux, le questionnement se fait moins pressant, plus doux, préparatoire d'une possibilité de divergences. Peut-être que le ton se fait plus conciliant. Mais ce sur quoi l'erreur est sanctionnée (puisqu'il y a une certitude de la connaissance juridique) passe en force.

Par suite, la restitution correcte du droit – la réponse attendue, telle qu'elle est sollicitée par la question – se doit de rappeler en son sein la force du droit. Nous, les juristes, apprenons dans les facultés, à produire un discours qui est d'autant plus juridique qu'il rappelle (recall) la violence du droit. Et la prise de conscience de cette violence peut être terriblement brutale.

Elle l'est d'autant plus lorsqu'elle se double du sentiment de ce qu'une partie de son avenir professionnel dépend de sa capacité à restituer le droit correctement. A reconduire sa violence, à en accepter la brutalité, donc. Il faudrait se projeter dans la peau de ce personnage qui incarne la force du droit. Celui dont la position dans le monde est liée à son habileté à affecter la violence du droit. Brutal à la demande.

Ce n'est pas suffisant. Il y a autre chose de plus qui s'exprime dans l'idée de « brutalisation ». Une souffrance plus aiguë, plus singulière et, peut-être, plus identitaire. Quelque chose qui s'alimente à la racine de ce que l'on fait ici. Ce pourrait-il que l'exigence théorique, critique pluraliste et globale sécrète une forme innommée de brutalité ?

L'effort de compréhension des différentes traditions juridiques, la travail de déconceptualisation / re-conceptualisation des données du droit, le souci de la diversité, l'extraordinaire bouillonnement intellectuel qui agite la communauté universitaire ici même provoquerait un contrecoup douloureux. Au terme d'un effet incontrôlable, plus l'enseignement prendrait au sérieux la nécessité d'ouvrir la texture du droit, plus ce contrecoup serait violent. Il s'agirait d'un choc en retour : plus on introduit de complexité dans l'enseignement, plus la simplification nécessaire pour clore l'acte d'apprentissage suppose l'investissement de la part de celui qui étudie. Et plus elle crée de risques de traumatisme.

D'où l'idée que la souffrance constituerait la contrepartie nécessaire de l'éducation juridique la plus raffinée et, paradoxalement, la plus ouverte.

Tout ceci n'est guère réjouissant.

Sauf à remarquer le motif de ce qui est une invitation à prendre conscience, à penser, à avancer, donc. Le refus de toute complaisance me semble bien plus réjouissant, même s'il est lui-même douloureux, que la contemplation de nos mérites. Je crois que notre force vient de notre capacité à nous questionner Ḧet à nous réinventer.

L'emploi d'un mot aussi violent que « brutalisation », pour désigner une part de l'activité d'enseignement du droit, et indiquer une difficulté à gérer les conséquences de certaines attitudes intellectuelles, est significatif. Il indique précisément que la violence en question n'a rien de naturel. Quelle n'est pas inéluctable. Qu'il n'y a aucune raison que ceux qui en souffrent n'aient d'autre choix que de souffrir en silence. Que le personnage juridique reste à inventer.

Le fait qu'il y ait une violence intrinsèque au droit ne veut pas dire que j'ai un rôle à jouer au soutien de cette violence. Mais que les points aveugles de ma pratique quotidienne doivent être mis en cause.

Au-delà, le choix de madame Gibbs, de messieurs Brosseau, Shortt, Saucier Calderón et Boulanger-Bonnelly d'engager la discussion témoigne, à mes yeux, d'une volonté de peser sur la construction du monde académique, leur monde. Ainsi que du refus de simplement s'insérer dans un espace social préconstitué et intangible. Je crois que c'est ce que la faculté de droit, et notre Faculté, peuvent contribuer à faire.

Je n'y vois pas un motif de défiance, mais un espoir.

PATRICIA NOWAKOWSKA

Law II

STUDENT SOCIAL CAPITAL INTO CURRICUL
TO TEACH IS TO LEARN

The discussion surrounding student-led seminars is gaining momentum. Many arguments in favour of such initiatives focus on the proposed seminars' respective value in terms of subject matter, student interest, andrelevance to our unfolding future endeavors. It would be audacious to attempt a template of subject matter prioritization necessary in selecting the one lucky winner of the grant – who can claim to say why a more focused study of Sexual Assault, for instance, is more deserving than the study of Law and the Internet or Critical Race Theory? The faculty administration is thus in the unenviable position in having to ascertain the criteria that will need to eliminate all but one of the many proposed seminars. Theirs is the proverbial position tucked between the rock and the hard place.

I aim to focus this piece on a proposal of an alternative: Why not allow them all? The main thrust of advocating for such experiment is the proposition that our faculty's social capital can, not only benefit from student-initiated curricula, but also contribute to the academic stock, fostering a co-production of knowledge, a fortification of peer bonds, and a transcendence beyond the systemic teaching-learning boundaries.

It may be a bold and unprecedented move – but when did breaking out of the box into the arena of innovation ever scare or discourage our law faculty?

I. Co-Production of Knowledge

In 1918, American educationist, John Franklin Bobbitt published the first book on the subject of 'curriculum.' The term was defined in accordance with its Latin roots as a 'racecourse' of deeds and experiences through which "children become the adults they ought to be for success in adult society." This etymology runs in tandem with the word 'ēducātiō', the act of bringing-up, rearing. This is why we have 'courses' of specialized subjects relevant to our juridical formation. What dictates our 'courses'? The legal field dictates our courses. The traditional curricular structure can be thus seen as a production-consumption model: we, the students, consume what scholars produce in order to mature academically and professionally.

Scholars carefully survey the field, seeking out truths, critically negotiating their merits, and transmitting analyses to our hungry minds. We consume, and when called upon to draft a research paper, we try-on the scholar-role of deepening our understanding and reaching our own interpretations. We turn these in and retrieve a grade. The thrilling moment in knowledge-production usually ends with this climax. I often wonder if some of my prouder research papers ever affected their readers beyond proving diligently discussed and abiding by the rules of thought-organization. I like to imagine that ideas so laboriously sought, arrived at, and articulated, had some miniscule impact beyond cluttering my professors' desks.

On the other hand, I am endlessly curious about my classmates' writing. I fight the urge to ask because I fear that the curved, competitive ethos of law school sees student papers warily guarded; knowledge unshared. In this traditional model, we learn, but we remain the childlike consumers of knowledge. Of course, we may aspire to earn our academic adulthood by building up to a "magister" or "doctor" level. But until then, our knowledge is pretty much self-contained.

II. Peer-to-Peer: Horizontal Learning

What if, then, we could construct a forum for sharing of our respective academic finds? Indeed, many presentations of paper-topics or other course-relevant, independently researched subject-matter find their way into the classroom. I revel in these opportunities. However, there is a caveat. I can only speak subjectively, but my main target audience for all presentations is the professor and my main objective for presentation remains the 'grade.' To further hamper the experience, my classmates' presentations are also received in a tainted manner. The better and more interesting they are, the greater the sense of pressure: after all, their performance and knowledge-mining affect the evaluation of my own. I cannot describe the extent of my antipathy for the 'curve' and I am happy that the smaller seminar courses aim to assess students in absolute rather than relative terms. However, there is always the underlying vestige of academic envy and only a pure horizontal knowledge exchange without a grade-point hierarchy can promote a true appreciation of the substance of our discoveries rather than a sense of one-upping our peers.

One may ask: Why not share the information and educate each other through the many informal avenues extra-curricula open? Reading groups, student clubs, and conferences are among the many alternative channels of learning from peers that span beyond the classroom. There is much to be gained from such interactive, deinstitutionalized modes. But there are undeniable obstacles to embracing such opportunities fully: there is just too little time to go deep. A law school course-load, other extracurricular commitments necessary for self-enrichment, or (in many cases) résumé-padding, compounded with part-time jobs, leave students with dear little time and energy to delve into in-depth research, analyses and meetings. There is something to be said for learning with credit. Organization of, and participation in, such endeavors is dedicated, hard work and credit should be given where credit is due. It is also important to mention that, while student-led, credit seminars profit from professorial supervision. Along with the benefits of structure, the presence of credit and professor guidance, the stu-

dent-led seminar acquires the merits of discipline and diligence.

III. Transsystemia 2.0

A critical reader may point to the seeming paradoxes: we want to be co-producing knowledge for its own sake, but we ask for the credit; we want to share information and learn from each other like academic 'adults', but we want a professorial lifeline; we want organic, deinstitutionalized approaches through collaborative education, but we want them within the confines of our institution. To reconcile the paradoxes, all we need to do is break out of an accepted systemic vision of education: To teach and to learn does not need to create two different experiential camps- by taking on the roles of teachers we stand to discover new vicissitudes of learning.

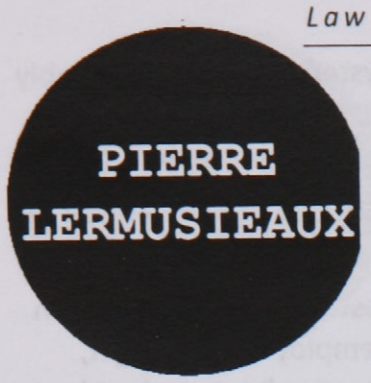
Once upon a time, in a fever to gain a proper understanding of transsystemia, I found an article by Prof. Jukier entitled "Where Law and Pedagogy Meet in the Transsystemic Contracts Classroom." It was a revelation. I am filled with a particular McGillian pride whenever I reread it, specifically the passage:

The goals of legal education under the transsystemic programme have expanded. No longer is it seen as adequate to teach, no matter how well, distinct systems of llegal thought in separate silos. The goal now is to create minds so agile and creative that they can think open-mindedly within alternative systems of thought, nimbly moving across and, as need be, transcending the boundaries of these systems. p. 795.

Of course, the systems referred to above concern juridical traditions not just pedagogy as pedagogy in and of its self. If we expand the definition of 'systems' beyond the substance of what we learn and into the greater modus operandi we employ in studying it, isn't there something deliciously transsystemic about student leadership and collaboration in seminar development? Does the experiment not promise a multiplicity of perspectives and approaches that draw on the great diversity of our students' academic and cultural backgrounds? Does our ardour not reveal a sense of pedagogical innovation sprouting from the ground up?

I hope the faculty notices that our agility and creativity necessary to advocate for student leadership in seminar development are beautiful monsters of their own making. I want to applaud the level of consultation McGill has afforded us and their respect for our vocalization of curricular concerns. We want to break out of the dichotomy between learning and teaching and morph the two into a gallant centaur. We implore the Faculty to trust us and guide us in this course to academic maturity. We invite the challenge of this responsibility. After all, what legal professional would ever deny that her/his role is anything but that of an eternal student and teacher of law?

Law II



LES DROITS LINGUISTIQUES AU CANAD
PROPOSITION DE SÉMINAIRE POUR L'A
NÉE ACADÉMIQUE 2013-2014 – 2 CRÉDI

Avis à toutes/tous les adeptes de diversité linguistique!

Are francophones in British-Columbia entitled to present evidence in French in the context of civil proceedings? Should knowledge of both official languages be a requirement for all judges sitting on the bench at the Supreme Court of Canada? To what extent should First Nations have access to publicly-funded education in their native languages? How can Québec reconcile the objective of protecting the French language with that of fostering the development of a multicultural and multilingual society (or must it do so)? If you have pondered these types of questions and are eager to further your knowledge of the relevant case law, we are convinced you would enjoy this student-lead seminar!

Dans le cadre de ce séminaire (et en plus des questions mentionnées ci-dessus), les étudiants aborderont diverses problématiques, dont notamment l'accès aux services publics dans l'une ou l'autre des langues officielles, les remèdes disponibles en cas de violation d'un droit linguistique ainsi que le bilinguisme législatif, entre autres.

À cet objectif académique se rajoute un objectif de promotion : ensemble, les participants devront entreprendre un projet de sensibilisation à l'égard d'un enjeu d'actualité affectant une ou plusieurs des communautés de langue officielle en situation minoritaire au Canada. Des projets potentiels incluraient : la soumission d'un mémoire portant sur une réforme législative (fédérale ou provinciale) affectant ces communautés, comparution devant un comité parlementaire, organisation d'un colloque pour le congrès de l'Association francophone pour le savoir (Acfas) ou publication d'un article dans une revue juridique.

Ayant constaté qu'aucun cours offert à la Faculté de droit de McGill ne traite de façon approfondie de la situation des communautés de langue officielle en situation minoritaire au Canada, l'idée de proposer ce séminaire nous est venue.

Ce séminaire permettrait à la faculté de réaffirmer son engagement quant au bilinguisme, tout en permettant aux participants de débattre d'enjeux d'actualité en matière linguistique et de produire un travail qui reflètera leur passion pour ce thème fascinant. De plus, Professeur Robert Leckey a gracieusement accepté de jouer le rôle de conseiller académique auprès des étudiants qui s'inscriront. Curieux, intéressés, passionnés…tout le monde est le bienvenu!

We heartily encourage you to write to Lianne Barski (lianne.barski@mcgill.ca) in order to signal your interest for our student-lead seminar proposition. Any and all support would be greatly appreciated.

Sincèrement,

Au nom des membres du comité Droits linguistiques McGill – Linguistic Rights McGill

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Law I

FIRST-YEAR STUDENTS WEIGH IN ON
STUDENT-LED SEMINARS

We are 1L students and we support Student-Led Seminars (SLS). We believe that they are a valuable part of the McGill course offerings and fill important gaps in our curriculum.

The student-led seminars proposed for next year include Aboriginal Law, Restorative Justice, Sexual Assault and Critical Race Theory. These courses provide an "outsider" perspective on the law that is often overlooked in our core classes [1]. They challenge the neutrality of the law and allow opportunities for critical thinking that are crucial to educating the kinds of lawyers and scholars that McGill wants to train.

Given the value of student-led seminars and the gaps they fill in our curriculum, we are concerned with the fact that students can only take or organize one SLS for credit during their law degree. W hope that there will be a diversity of seminars offered next year.

As we continue our legal education at McGill, we hope to see mor of these kinds of valuable learning experiences, not fewer of them

1. Term borrowed from "Counting Outsiders: A Critical Exploration of Outsider Course Enrollment in Canadian Legal Education" (2007 Osgoode Hall Law Journal, 45(4), 667-732.

PAUL HOLDEN

INTERNET LAW : FIELD TRIPS TO CYBERSPACE INCLUDED

Vous rappelez-vous de 1435 C.c.Q.? C'est l'article qui parle des clauses externes dans les contrats. Mais qu'est-ce qu'une clause externe dans un contrat qui vous est transmis à partir du Web? Est-ce qu'un lien vers une clause externe suffit à satisfaire la condition d'être "...expressément portée à la connaissance du consommateur..."? Et qu'est-ce qu'un lien? Ce sont des questions existentielles que la Cour suprême a dû considérer dans l'arrêt Dell c. Union des consommateurs. Et à mon avis, ils n'ont absolument pas compris ce qu'est un lien, mais ça c'est une autre histoire.

If contract law is not your bag, there are plenty more existential questions awaiting your consideration where the law collides with cyberspace. Questions that jurists everywhere are struggling with. The consequences of getting it wrong could have a serious negative impact on online commerce or online speech. In 1996, when Internet access first started to become available outside military and educational institutions, the US Congress enacted the Communications Decency Act. Cyberspace was a terrifying place back then and parents wouldn't let their teenage children online without constant supervision. The purpose of the Act was to eliminate all indecent content from cyberspace. The trouble was, nobody knew what "indecent" meant, and there was a real risk that one person's "indecent" was a another person's "politics" and that this could go very wrong very fast (Incidentally, at the time, President Clinton's sex life was the focus of all Republican politics.) Fortunately, the US Supreme Court understood the problem and struck down the Act.

L'été dernier, dans A.B. c. Bragg Communications, la Cour suprême a considéré la question de l'anonymat dans un procès de diffamation. A.B., une adolescente qui a été victime d'harcèlement sur Facebook, voulait intenter un procès en diffamation, mais voulait rester anonyme devant la cour. A.B. habite dans une petite communauté en Nouvelle-Écosse, et ses parents craignaient une nouvelle vague d'harcèlement si son nom était soumis devant la cour. La cour devait ainsi considérer les craintes particulières d'une adolescente, et en même temps elle devait respecter les principes de droit commun sur la diffamation et la liberté d'expression. Parmi les intervenants, il y avait d'un côté la B.C. Civil Liberties Association, et l'Association canadienne des libertés civiles de l'autre. Ces questions ne sont pas faciles.

Is WordPress a private publishing platform, analogous to a newspaper? If your blog contains subject matter offensive to the owners of this online "press", does the owner have the right to take down the post or delete your blog entirely? What's the meaning of "public space" in cyberspace and if we rely on private publishing platforms to express ourselves online, what's our recourse when our platform is shut down?

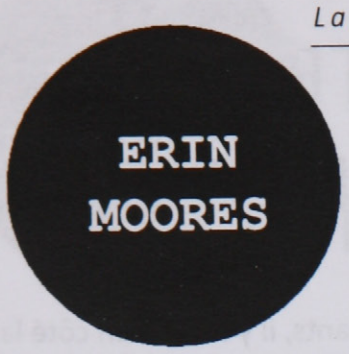
This is why a number of 2Ls have submitted a proposal to the faculty to offer a student-led seminar entitled "The Law & Cyberspace". Wherever the events of daily life unfold, the law inevitably comes into play. As more of life happens online, understanding how the law will apply online becomes increasingly important. We'll be taking a broad look at law and cyberspace, looking for the analogies that apply most appropriately in cyberspace. We will take conventional and well-understood problems of real law in the real world, and try to figure out how they can be solved in cyberspace.

The seminar will include typical in-class discussions, presentations, and short essays. Besides the subject, one novel thing about this course will be participation. The course will include an anonymous online forum for discussions outside of class. Students' identities will be unknown to each other and the world. This unusual foray into cyberspace will help us explore the sometimes controversial ideas of identity and anonymity as well as their limits.

Topics covered in the course will include: the line between online civil disobedience and criminal activity or acts of war, how to protect online platforms for free speech when those platforms are privately owned, and how to protect privacy rights in cyberspace where the potential invasions of privacy are more numerous than ever before and the reasonable expectation of privacy is not easy to define. We'll be talking about contracts and what it means to consent in online transactions as well as cyberspace analogies in tort law, for example defamation and trespass to chattels.

What now? La faculté a reçu des soumissions de six groupes pour offrir des student-led seminars l'an prochain. Les étudiants ont proposé plusieurs très bonnes idées, et c'est dommage que la politique de la faculté ne permette d'en offrir qu'un seul par année. On attend toujours la réponse de la Vice-Doyenne. McGill has a reputation for being at the forefront of legal education in Canada. Here's hoping it will continue the trend in its offering of student-led seminars.

Law I



WHY THIS AGAIN?

This is the situation, a bit oversimplified. Students in our faculty want to initiate and create courses, called student-initiated seminars, on topics that interest them. These students are proposing ways of both filling curricular gaps and exploring certain topics in-depth in a student-directed, collaborative manner. And they're meeting some resistance from the faculty.

It's nothing new in the world, and nothing new to me personally. I'm a former student of the University of Waterloo's Bachelor of Independent Studies programme, the only undergraduate programme in Canada whose students walk in the door on day one with virtually complete control over what they learn and how they learn it; where, if a student chooses, every single "course" s/he pursues can be self-directed with guidance from faculty supervisors. No exams. No assignments - except for the ones you assign yourself. No marks.

The fact that it's the only undergraduate programme of its kind shows in and of itself just how much resistance there is in our culture to student-directed education. Moreover, I've encountered a lot of resistance from people to this concept of an independent studies program - everything from "Sounds like a joke" to "How do you know what you need to learn?" to one of the most common responses from people who had never had the opportunity to be educated in this way, "I could never do that."

At McGill, the resistance to self-directed education comes in various forms. One easy example is that first-year students have virtually no choice of courses. Another is the limit on the number of student-led seminars a student can take to one in their entire degree - the limit is one. Word on the street is that the faculty will only accept one student-led seminar next year from several different proposals on topics like restorative justice and sexual assault law.

I have no doubt there are financial and administrative constraints that contribute to this resistance. And the Barreau du Québec is not shy about telling law schools what courses their students must take in order to admitted to the bar. There are certainly factors that are out of the faculty's control. But I also notice something more, the same thing I've noticed all along, since I was a student at Waterloo and since I started studying educational theory and alternative education: like most educational institutions, the faculty's attitude towards student-directed education isn't one of encouragement or pride. It's tolerance.

I've often wondered why this is so. In other realms, student-initiated activity is valued, both at McGill and at educational institutions in general. You'll find the school more or less boasting about the number of student clubs and organizations that exist on campus and using them as a selling point for the "campus life" facet of their promotions. Faculties and universities make no secret of being proud of their students for all this. Moreover, within university curricula, many undergraduate students are encouraged or even required to complete some sort of self-directed study to complete their degree. At our faculty, the term paper is the best example. It's really a way for a student to explore, in a self-directed way, a specific interest in an area of law that is not covered in-depth in their traditional courses. And of course, at the graduate level, self-directed study is actually the norm.

And yet, when it comes to students wanting to design their own courses and effectuate them in our undergraduate program, we resist it. We shouldn't. Others make the important point that student-initiated seminars can offer students a way to fill gaps in the curriculum. But I would go further to say that the general idea of having student-initiated seminars offers us much more than this.

I know this because my undergraduate degree wasn't a joke, and it wasn't something that most students could never do. It was an environment of collaboration, not competition; of passion, not disillusionment; of exploring, not following; of creativity, not memorization; of unlearning as well as learning. When a student is responsible for not just the outcome of their learning but the process by which they learn it, the overall learning increases exponentially. What emerged over and over again for me was that when I had responsibility for both aspects, it was the process - of creating the course, of tweaking the methods of learning and evaluation, of reasoning my choice of approach and resources - rather than the outcome that allowed me the most and best opportunity to develop my intellect, creative thinking and ability to synthesize complex information.

This is what makes the resistance to student-initiated seminars so perplexing. What faculty wouldn't want to create a space like that for its students through offering a significant number of options for self-directed and student-initiated study? Why would a faculty tolerate student-ini-

tiated courses rather than take pride in them, rather than actively encourage them by offering students credit for undertaking this extra challenge? What is it that would happen if we shifted our perspective to one that welcomes creativity and initiative of students within the curriculum framework as well as outside of it? The only way that the negative effects of student-initiated seminars could outweigh the positive effects is if the faculty keeps under-appreciating them and refusing to recognize their distinct power as a dynamic and exciting tool for academic and personal development - a tool that is at least as valuable as any other.

For all the 'boldness' in transysstemia, the faculty is otherwise as traditional as any other law school in North America in that it decides how its undergraduate students learn and how they learn it. You might think my Independent Studies experience was an extreme form of education, but it has allowed me to see the traditional pedagogical approach embodied by our law faculty and by most educational institutions in Canada as one that is also extreme - it's just at the other end of the spectrum. What if we were to find somewhere to meet in the middle, a place where the knowledge and expertise of the faculty in shaping some of our learning was respected, but where the tool of student-initiated study was appreciated as complementary, as offering something that standard faculty courses can't?

What might happen is the same thing that happened to me when I initiated my own courses at Waterloo, and what I saw happen to other students. We were disoriented for a moment, because at first it seemed like having the boundaries taken away meant being in a no-man's land with nothing to hang on to. But it didn't. All it meant was that instead of doings things the way they'd always been done, we'd now given ourselves the freedom to do everything else.

BCL/LLB 2011

MEENA K. GUPTA

BLACK LETTER BEDLAM

When I've wandered across the line between idle musing and pointless pontification in the earshot of my mother, she will say to me "oi Meena, sadey layee kala akhar bhains barabar". She won't tell me that I've wandered off into the realm of the inexplicable, but rather that she couldn't possibly understand what I'm saying due presumably to her humble (or sarcastic) assumption of her own limitations. "Kala akhar bhains barabar" is a punjabi idiom that translates (more or less) as "a black letter looks the same as a black buffalo [to the one who doesn't know the difference]". It's a not entirely politically correct reference to illiteracy, and more generally, to lack of education.

At some level I've taken "kala akhar bhains barabar" to heart: I've come to think of the process of educating as starting with discerning sign from signified, between the letter on the page and its representation in the world. As we progress in our education our ability to discern is sharpened. The world becomes increasingly about the haze of grey between contrasts. As jurists, I think we take that art of subtle dissection very seriously, particularly when attempting to cleave a decision to distinguish from it or cling to it. Those of us with the dubious privilege of appearing before judges get the added delight of trying to argue that we've made the distinction correctly and consistently with the guiding principle of the day.

One of the early distinctions that I can recall learning about in the first year of legal education is the core/penumbra divide. I've struggled with this in the same fashion with many of the ideas I learned in my time at the law faculty: the core/penumbra concept inverted and disturbed my own thinking on marginality that I had brought with me to my further education. Politically, one can understand marginalization in a number of ways. Law's way of looking at the penumbra mirrors the understanding of marginalized individuals as those who have not (yet) gained entry to the privileges of the core; who have not yet settled and become firm and clear.

There is no "settling" if you think from the position of the luminal. The concept of easy, understandable, collectively understood truths is exactly what subversives stand to subvert; the settled understanding of Canadian multiculturalism and racialized people, for example, is something that we would not be able to leave intact if we are having a discussion about racism. On that level, the understanding that some legal concepts are settled makes the world more understandable and workable, but also entrenches the settled ideas of our past.

When thinking about course selection, the requirements of what is understood and normatively enforced to be key components of a standard legal education would understandably be at the forefront of curriculum planning. There is understood to be a core set of courses and concepts that we need to engage with if we are to be legally educated. I found (in my experience at least) that McGill's student-led seminars are a venue for satisfactorily disrupting the core/margin division. Many of the courses proposed and offered have either become standard or deal with "black letter" law. At the same time, these courses, being on the margins of the curriculum and not formalized into standard teacher-taught lectures, are in a position to change our expectations about our learning experience.

I had the opportunity to help organize the first sexual assault law seminar at McGill. Being on the "other side" of curriculum planning, even for a brief moment, changed the way that I thought about my education. In our particular iteration of the course, we engaged with social and critical theory and thought, legal history, and took that with us to our "black letter" analysis. Being informed and mindful of the cesspool we were wading in was rather like walking through mud in boots as opposed to sock-footed. There was some insulation from the sense that we were only to examine things dispassionately, and at the same time, a sense of sure-footedness in knowing that (as far as I could tell) our teacher-student-colleagues were learning the core concepts.

I am not saying that we can't have valuable experiences in traditional classrooms. Rather, I hope to have emphasized that there is something valuable and unique in the experience of participating in a student-initiated seminar. Personally, it was the turning point in my legal education, and it probably contributed to my not dropping out and not (yet) leaving the legal profession. My experience taught me that we can learn to think about law differently (and I don't think I'm alone, as evidenced by a number of students, former and current writing in this issue of the Quid).

GARRETT ZEHR

Law II

ON SEMINARS AND STUDENT INPUT

At the LSA AGM in October we passed a resolution advocating for a substantial role for students in decisions about course offerings and course content. The resolution recognized that it is students who are among the most affected by these decisions and who are in a very good position to know the courses that will be most useful for their future careers and personal development.

The resolution called on the Curriculum Committee LSA reps to consult students and develop ways for students to have a substantial role in both course offerings and the content of the courses themselves. Last month the Curriculum reps held a townhall about the subject. In addition to providing better understanding of some of the mystery over how these decisions are made, there were some great ideas about student input that came from the discussion. I look forward to having these ideas conveyed to the LSA, the Curriculum Committee, and Faculty Council and to see continued consultation and advocacy on these issues.

A process that in a limited way already addresses some of the issues around student input is the student-initiated seminar. Indeed the AGM resolution affirmed the important role of the seminar in McGill's curriculum and called on the LSA to advocate that students be allowed to take more than one seminar for credit (as is currently the case) and that seminars that are held repeatedly, such as Critical Race Theory and Sexual Assault Law, should be given the necessary faculty resources to become regular courses.

I see multiple benefits of the seminar, many of which are being put forth by others in the Quid pages this week. I would like to address some of the reasons for resistance to the seminar that I've heard over the past couple of months.

Some people have suggested the seminars should serve only a pedagogical role that allows students organizers the opportunity to develop skills such as curricular development and teaching. While there is value to these experiences, the vast majority of people I've spoken to who are interested in organizing or taking these seminars are doing so because of gaps they see in the curriculum. If this is indeed the purpose, then there is no need to limit the number of seminars a student can take over the course of his/her degree (as we are allowed to write multiple term papers), or to not approve multiple seminars each semester.

Another concern has been about academic rigour. From my understanding, other pass/fail credits, such as journals, clerkships or clinics, have quality control measures in place that are similar to the seminar. My anecdotal evidence also suggests that students leave these seminars learning more than they take away from many other courses.

A final concern I have heard is about a lack of faculty resources. This claim I also find unconvincing. Professors who agree to supervise the seminars do so without receiving any kind of workload reduction. While this is problematic and concerning and should be rectified (as should other ways that work is valued in the Faculty such as $12/hour wages or asking students to pay tuition for credits when acting as TLs or GAs), the argument cannot then at the same time be made that the seminars are taking up significant human or financial resources.

I look forward to the continued discussion about the role of the student-initiated seminar at McGill. I hope the seminar can continue to play a valuable role in our broader calls for more significant input from the student body on course offerings and course content.

AN EXCERPT FROM "KALEIDOSCOPES OF KNOWLEDGE: A LAW STUDENT'S REFLECTIONS ON PROCESSES OF INJUSTICE AND (RE)COLONIZATION PRODUCED BY LEGAL EDUCATION"

MANPREET DHALIWAL

Student-Led, Student-Initiated Critical Race Theory (CRT) Seminar

The universities were places for self-perfection, places for the highest education in life. Everyone taught everyone else. All were teachers, all were students. The sages listened more than they talked; and when they talked it was to ask questions that would engage endless generations in profound and perpetual discovery.

The universities and the academies were also places where people sat and meditated and absorbed knowledge from the silence. Research was a permanent activity, and all were researchers and appliers of the fruits of research. The purpose was to discover the hidden unified law of all things, to deepen the spirit, to make more profound the sensitivities of the individual to the universe, and to become more creative.

- Ben Okri, Astonishing the Gods, 1995

A cold shiver runs from my right collarbone down my spine as I read this. This is what I had wanted when I came to law school, this is what I had been looking for. During my three and a half years at McGill, I have witnessed a serious encroachment on academic options. Emphasis of what's important and what's not has shifted, evidenced by the decline of feminist law offerings, absence of CRT offerings and limited Aboriginal law offerings. What is taught and what isn't indicates what the Faculty deems important and what students ought to think is important. Last year, Business Associations became a mandatory course. Only 90 minutes of the core curriculum over three and a half years are dedicated to "issues" such as critical race theory and access to justice, however. Two Criminal Law classes at best will be devoted to sexual assault law and little, if any, time will be devoted to disability law. None of these "issues" have been deemed worthy of constituting mandatory "subjects," though some are occasionally offered as electives or student-led seminars.

In my second year at McGill, I collaborated with three other students to propose a student-led, student-initiated seminar to the Dean. Recognizing gaps in the curriculum and the need to incorporate a more critical dialogue about structural racism in our work and classrooms, as well as the need to intervene and actively change the culture of our Faculty, we proposed a Critical Race Theory course (CRT). Our proposal was accepted and we spent a year organizing guest speakers, recruiting students, developing a reading list and agreeing upon methods of evaluation. All participants in the seminar acted as "student-teachers and teacher-students" to create dialogue and collectively share responsibility to achieve the course goals. Each class was be led by a student-facilitator except when members of the judiciary, professors or community organizers guest lectured. Students were evaluated on the bases of four criteria, each of which was given equal weight and was pass or fail: a class facilitation/presentation, general participation, a creative response and research paper.

One woman came to the class with the hope of finding a space to exhale. Why am I here [in the CRT class]? Part of my reason for co-organizing this class was my need for a space where people would understand or want to understand me, the other part was the need to develop a vocabulary - a linguistic arsenal - that would allow me to articulate these thoughts in academic spaces...I'm looking for people with whom I can envision a better, more equal and just future. I have felt voiceless and my lived experiences have been devalued. I want to bring more of who I am to this space (3L). The CRT class held space for dialogue and group learning but most importantly, it valued participants' experiences. Feminist pedagogy has always recognized the importance of experience in the classroom. Experience changes the center of knowledges produced and available to the classroom. The politicization of students' experiences serves to 'authorize' marginal experiences and creates space for multiple, dissenting voices in the classroom. The authorization of experience is thus crucial for empowerment(1).

In this class, we believed in employing and seeing through a variety of frameworks of operation. We worked hard not to impose our vision of the norm by having different student facilitators, each of whom taught, facilitated and fostered dialogue differently. We explicitly laid out ground rules for communication. We named inequalities in the classroom, moments when we felt we could not share and the realities of social interaction. Students came in with the desire to learn together and from one another; new knowledges were created. Students facilitated learning processes rather than teaching one another. The fear of sharing something and sounding "stupid" or "irrelevant" in the eyes of the professor did not exist. No one claimed to have greater authority or knowledge than anyone else even though some had more familiarity with the subject matter than

others. Students transcended the imposed consciousness of legal culture; we found a space in which we could exit the self-enclosed and self-perpetuating uncritical immersion of the pedagogical status quo (2).

We are looking at section 9 of the Charter today. The student facilitator wants us to explore spaces and moments where racial profiling occurs. Before analysing the legal articles, we speak from our own experiences, and it is powerful. I break the ice by telling a story about my 19-year-old cousin. He sometimes pops his hood up when he drives by the cops because he knows they will stop him. He did it last summer; as anticipated, they stopped him. They searched his entire car. He knew they would. "It's only Friday night," he told them, "And I don't have school til Monday, so take your time."

Another student shares a story. Some years back, her black 7-year-old brother carried a tv home from a garage sale. He was stopped by the police because they thought he had robbed a house. Another student tells us that her mother gave her and her brother Jewish names so that they wouldn't automatically be excluded when applying for jobs; that they would at least be able to reach the interview process. The stories keep coming. Two women echo keeping their reusable bags far away from their items when shopping in fear of being stopped arbitrarily, because they know they are more heavily surveyed. The external structures cause an internal detainment. This internalized detention as a result of external structures and institutions is psychological; intangible to others, it is a discursive loop.

When the inner histories and experiences of students are central, critical reflection of the everyday experience can occur and daily relations of domination can be uncovered (3). By opening space for voices traditionally suppressed in the legal classroom, the CRT class resisted reproduction of the status quo. Access to and space for multiple experiences offered different ways of understanding the issue at hand and because it emphasised learning through the senses. By exposing students to unfamiliar problems and situation, the class made space to build new competencies and to understand that s. 9 of the Charter only makes sense from a particular viewpoint. Such realizations enables students to operation both within that legal framework and then shift out of it for the purposes of critique and analysis, as well as personal growth and emotional development (4).

The student then asked how we protect ourselves in those spaces and moments of racial profiling. One student responded, "We dress nicely": self-presentation as a form of protection. We are conscious of having marked bodies but cannot hide it. One woman tells us about what black mothers have to teach their children about interacting with the cops: it's not "what are your rights" but "will you come out of this interaction alive." Another woman tells us about being hassled by the cops when she and four black family members were waiting on the sidewalk while their cousin used the restroom in a restaurant. The stories demonstrated how brown bodies in the room were not allowed into the national body because they were constantly stopped and asked. The Charter could perhaps protect them in some of the situations, but it could not take away the internal detainment, processes and injustice that result from the persistence of the external. The stories raised a question in the hearts and minds of all students in the room – white students and those of colour: what does equal citizenship look like?

In our discussions and exploration of legal concepts, we created a counter-hegemonic pedagogy to combat attitudinal, pluralistic appropriations of race and difference. This involved a dynamic balance between the analysis of experience as lived culture and the reiteration of experience as textual and historical representation. In this class, we saw the limitations of the law while also understanding in what spaces it could operate to protect racialized individuals. We acknowledged where students came from, the challenges they faced and the positivity flowing from their lives. We found space to exhale. We gained an intellectual, sensory and shared understanding of inequality. In sharing our stories, we began remembering ourselves and reorienting ourselves from the disorientation.

Multiple consciousness as a jurisprudential method requires more than consciousness-shifting, however, it requires searching for a pathway to a just world (5). To find the pathway to a just world, there must be space and safety for the imagination. Imagination requires self-reflexivity: the ability and space to observe oneself within a space and to imagine acting differently within that space. Self-reflexivity offers a "mirror which we can penetrate to modify our image," both the image that we carry of ourselves and also the images we have constructed of the world (6). This new spatial order allows for the materialization of a third space – one of possibility, one that extends a multiplicity of practical actions rather than one rational path.

(1) Chandra Mohanty, Feminism without Borders: Decolonizing Theory, Practicing Solidarity (Durham: Duke University Press, 2003) at 202.

(2) See Charles Paine, "Relativism, Radical Pedagogy and the Ideology of Paralysis" (1989) 50 College English 6 at 558. .

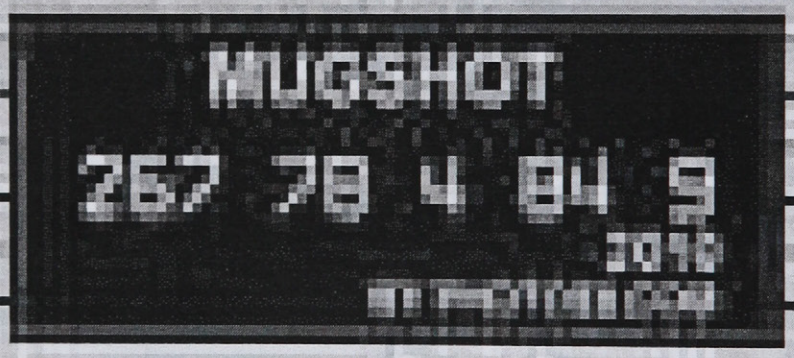
(3) Sherene Razack, Looking White People in the Eye: Gender, Race, and Culture in Courtrooms and Classrooms (Toronto: University of Toronto Press, 1998) at 42-3.

(4) See Mari Matsuda, "When the First Quail Calls: Multiple Consciousness as Jurisprudential Method" (1989) 11:7 Women's Rights Law Reporter at 10.

(5) Ibid.

(6) Augusto Boal, Rainbow of Desires, translated by Adrian Jackson (London: Routledge, 1995) at at 23, 29.

CRITICAL RACE THEORY



Please join the **CRT Student Initiated Seminar** for a **Poster-Presentation** and **discussion** analyzing a variety of legal issues from a critical race perspective. The Presentation will be followed by a reception in room 310.

When: April 10th from 11:30 – 14:30 am
Where: New Chancellor Day Hall, Room 312

McGill University - Student Initiated Seminar

http://www.mcgill.ca/law-studies/information/exams

McGill University - Faculty of Law

Examination Schedule

Winter Term 2012-2013

Subject to Change

(G) Graduate courses — April 17 - 30, 2013 — March 15, 2013

DATE	9:30	14:30
Wednesday April 17	Contractual OBS (Jukier, Dedek) ST 16 European Union Law II (Semmelmann)	Common Law Property (Lametti) Droit international public (Atak) Environment & the Law (Opalka)
Thursday April 18	Jurisprudence (Fox-Decent)	Complex Legal Tranactions (Hedaraly) Trial Advocacy (Kalichman)
Friday April 19	*Propriété intellectuelle* (Moyse)	Bankruptcy (Atlas)
Monday April 22	Extra-Contractual Obs/Torts (Saumier, VanPraagh) *Ex/délits* (Khoury)	JICP (Glenn) *Droit de la famille* (Tremblay) Government Control of Business (Semmelmann)
Tuesday April 23 (Term essays due)	Droit pénal (Nadon) The Adminstrative Process (Kong)	Restitution (Rabinovitch)
Wednesday April 24	*Preuve civile (Ferland)* Successions (Piccini Roy)	Civil Law Property (Godin, Moyse) *Droit de biens* (Emerich)
Thursday April 25	Employment Law (Goloff)	Common Law Property (Foster)
Friday April 26	Constitutional Law (Kong, Narain) Law of Space Applications GR (Jakhu)	Advanced Civil Law Obligations (Khoury) *Droit international privé* (Saumier)
Monday April 29	*Droit des sûretés* (Emerich) Evidence (Criminal Matters) (Klein)	Advanced Common Law Obligations (Lametti) ~~Business Associations (Muniz-Fraticelli)~~
Tuesday April 30	International Law of Human Rights (Mégret)	Judicial Review of Admin Action (Fox-Decent)

UPPER YEAR TAKE-HOME EXAMINATIONS

Available as of April 17th 9am and must be submitted latest by April 30th at 5pm

Advanced Common Law Obligations (Adams), Advanced Criminal Law (Healy, Israel, Paquin), Business Associations (Muniz-Fraticelli), Droit des affaires (Barbeau), Droit judiciaire (Bachand), Evidence Civil Matters (Grossman), Extrajudicial Dispute Resolution (Bachand), Intl Business Law(Walsh) GR

FIRST YEAR TAKE-HOME EXAMINATIONS

Droit constitutionnel (Gelinas), Obligations contractuelles (Forray)

COMITE DES LANGUES OFFICIELLES

SUGGESTED APPROACHES TO MCGILL LAW BILINGUALISM

As many of you know, the Official Languages Committee has been engaged in consultations over the past year in view of drafting a new linguistic policy for the Faculty of Law. A linguistic policy, if it seems that one should govern issues of languages, can be, as we see it, a statement of principle that describes our linguistic context and forms the basis of its evolution. Tel a été notre point de départ, et le constat du décalage entre la politique linguistique en vigueur depuis 1992 et la situation linguistique actuelle à la Faculté a jeté les bases, il y a un peu plus d'un an, d'un projet de mise à jour du document.

Au cours des derniers mois, beaucoup d'étudiants ont partagé leurs impressions du bilinguisme à la Faculté. Le bilinguisme est sans aucun doute une des expériences marquantes que tous sont appelés à vivre en étudiant à cette faculté. C'est une créature étrange qui est régie par des règles qui ne sont pas forcément apparentes.

Le 20 janvier 2013, le Comité des langues officielles a organisé une réunion « Town Hall », pour solliciter les commentaires des étudiants à l'égard du bilinguisme à la Faculté. Nous avons présenté aux participants une liste des « Approches suggérées au bilinguisme à la Faculté de droit de McGill » qui, selon nous, devrait former la base d'une nouvelle politique. Nous sommes très heureux d'avoir reçu des commentaires positifs et des suggestions relatives à ce processus de la part des étudiants lors de cette réunion.

Plus récemment, le Comité a rencontré à nouveau le Doyen, pour réfléchir à la forme et à la mise en œuvre d'une nouvelle politique linguistique. Nous espérons qu'une nouvelle politique sera l'objet de discussions (et, espérons le, d'un consensus) à une réunion du Conseil de la Faculté avant la fin de cette année scolaire. Les professeurs Evan Fox-Decent et René Provost ont accepté de nous assister et de nous guider dans ce processus et nous en sommes très reconnaissants. Mais comme d'habitude, nous avons également besoin de votre rétroaction!

In hope of stimulating more discussion, interventions, debate, and dialogue, we are thus very pleased to present to you our "Suggested Approaches to McGill Law Bilingualism". These suggested approaches will inform the drafting of a new policy, and we look forward to your continued input in this process.

Should you have any questions or comments on our "Suggested Approaches" please do not hesitate to contact us directly.

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1. Le comité recommande qu'une nouvelle politique linguistique soit rédigée dans son entièreté.

2. The Committee recommends that a new preamble contain statements recognizing:

o that English is the primary language of instruction at McGill University,

o that the Faculty of Law has a long history of teaching and scholarship in English and French,

o that the Faculty is located in Montreal, the largest francophone city in North America, that is also home to many languages and cultures,

o that the Faculty offers courses in a unique bilingual environment,

o that the Faculty is the only educational institution in Quebec that offers courses in civil law in English,

o that the comprehension of both English and French is an important element of the Faculty's transsystemic program, and

o the equality of both linguistic communities and of both the English and French languages at the Faculty.

3. The Committee recommends that a new policy contain explicit statements affirming that both English and French may equally be used in all Faculty settings, and that the English and French versions of all communications made by the Faculty are equally authoritative.

4. Le comité recommande que les agents de l'institution, terme défini de manière appropriée, soient encouragés, et non obligés, à répondre à un interlocuteur dans la langue officielle choisie par celui-ci.

5. Le comité recommande qu'une nouvelle politique linguistique requière que les discours prononcés par les agents de l'institution ainsi que les présentations ou les séances d'information données par ceux-ci soient composées d'une proportion significative de français et d'anglais, sauf s'il n'est pas approprié de le faire compte tenu de la nature de l'évènement.

6. The Committee recommends that a new policy specify that certain documents or communications products be published with the complete text available in both English and French.

7. Le comité recommande qu'une nouvelle politique linguistique spécifie que les étudiants soumettant des travaux écrits en français peuvent bénéficier d'une limite de mots supérieure que celle permise pour les travaux écrits en anglais.

8. The Committee recommends that a new policy specify that examination questions for bilingual courses be set so that both English and French are used in significant proportions.

9. Le comité recommande que les cours bilingues soient offerts de façon à ce que l'enseignement soit dispensé en faisant un usage proportionnellement significatif du français et de l'anglais.

10. The Committee recommends that all compulsory courses, based on demand, be offered in both official languages.

BLSAM

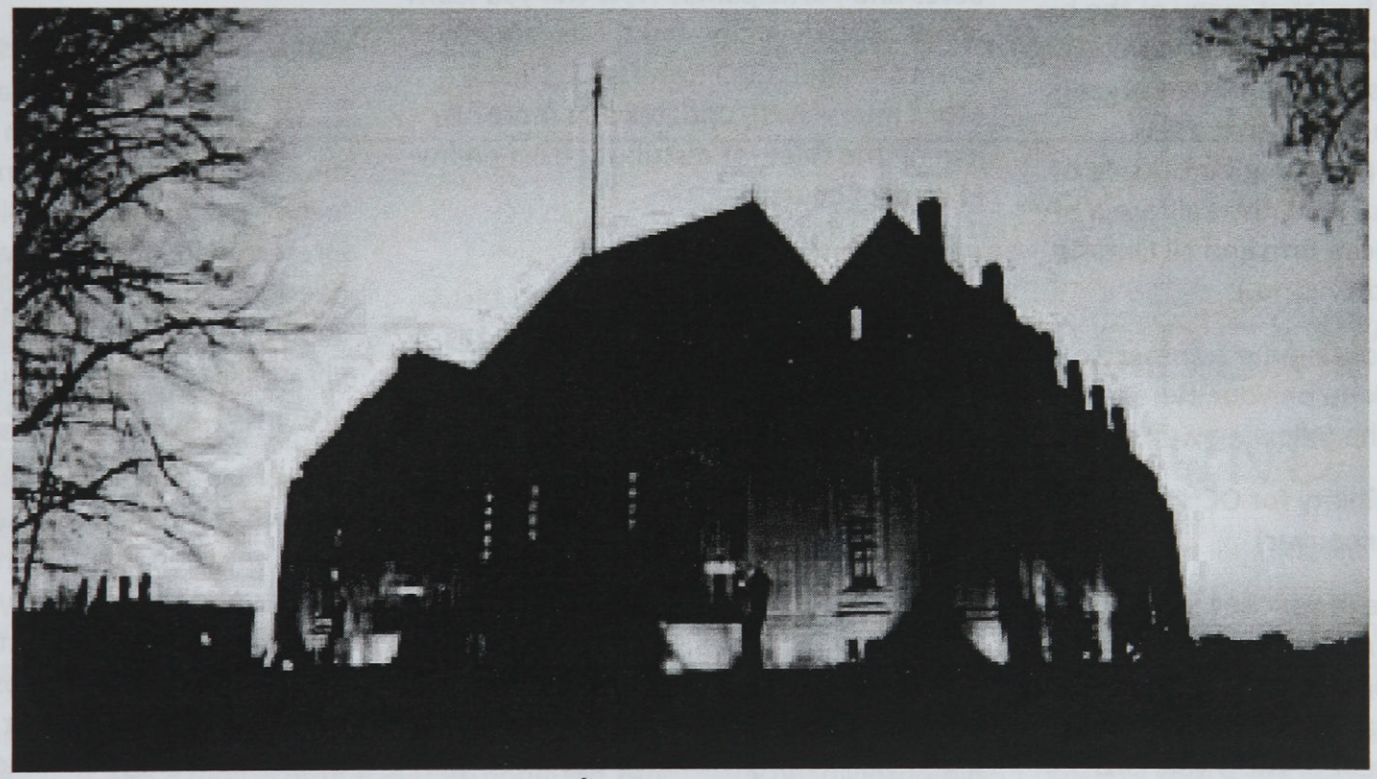
LETTER IN SUPPORT OF STUDENT-INITIATED SEMINARS

The Black Law Students Association of McGill (BSLAM) would like to express its support for Student Initiated Seminars (SISs). Students use SISs to highlight topics and recognise gaps in the current McGill law curriculum. We believe that SISs are important and should be valued by the Faculty of Law. The University of British Columbia currently offers a similar initiative called the Student Directed Seminars (SDS), which is indicative of how relevant these initiatives are in law schools across Canada.

SISs provide a space for students to engage with the faculty about what they need from their legal education. The student-initiated Critical Race Theory seminar demonstrates this point by highlighting that race should be better addressed in our courses and curriculum more broadly. The interest in the course has been overwhelmingly positive. Furthermore, during Black History Month, an interactive board in the atrium asking students to think about 'why I need race literacy' further highlighted the importance of critical race theory in the faculty's curriculum.

For students of colour, marginalization is a fact of life in the greater Canadian political social world as well as at McGill's law faculty. Initiatives such as the Critical Race Theory SIS allow student input for progressing forward, particularly in the areas of hiring and curriculum reform.

McGill's policy of promoting diversity and equity led to the creation of SISs and is crucial for its continued existence. We would like to appreciate McGill Faculty of Law for its unwavering support for SISs. It is thanks to this policy that we can continue to provide students with an academic platform to express their needs to the faculty.



DROITS LINGUISTIQUES McGILL PRÉSENTE
LINGUISTIC RIGHTS McGILL PRESENTS

'Bilingualism at the Supreme Court of Canada : Réflexions constitutionnelles, juridiques et législatives'

INVITÉ SPÉCIAL // SPECIAL GUEST
Yvon Godin, député fédéral, Acadie-Bathurst (New Democratic Party)
other guests TBC

Mercredi, le 20 mars 2013, de 11 h à 13 h
Maxwell Cohen Moot Court, McGill University Faculty of Law

CDO

SO YOU MISSED THE DEADLINE TO APPLY FOR OCIS

Did I get your attention? Good. Read on to avoid such a fate.

On-campus interviews (OCIs) are a popular option for students interested in New York, Toronto, Calgary and Vancouver summer opportunities. This summer and fall, employers will be recruiting for summer 2014 positions.

Not all employers in these jurisdictions participate in organized recruitment. Some follow their own recruitment timelines. However, you will find that many of the big and medium-sized players participate, whether they are firms or government organizations. It is worth noting that a few employers will be recruiting for outside of these cities (for example, the California offices of one American firm and all Ontario offices of Legal Aid Ontario.)

OCI deadlines fall during the summer, so do not let them sneak up on you. Here is what you should do in the following weeks:

1) Check your eligibility for OCIs (US, Toronto, Calgary, Vancouver)

You will need to be in your second-to-last year (or last year or semester) of the regular B.C.L./LL.B. program next September. This means 3rd year of the 3.5 or 4 year program OR 2nd year of the 3 year program.

Second-year students in the 3.5 or 4 year program are not eligible for OCIs.

2) Learn more about the requirements and usual participants for each city

In order to determine if you're interested in participating, visit the CDO website (www.mcgill.ca/cdo) in the "Organized recruitment" section (login required) and check the relevant tab for each city that interests you. Dates and participants do not vary drastically from year-to-year.

We update our website as soon as OCI dates are finalized, in collaboration with other universities, relevant law societies and service providers.

3) Join the relevant distribution list(s) on myFuture

And just how will you know that the website has been updated with this year's dates and participants? How will you learn about deadlines, tips, links, lists, employer events, related CDO events (CV Clinics, Mock interviews), updates and more? By joining the relevant distribution list on myFuture, of course:

- Events/CDO Workshops/Panels/Events/"US OCI Distribution List"
- Events/CDO Workshops/Panels/Events/"Van/Cal OCI Distribution List"
- Events/CDO Workshops/Panels/Events/"Toronto OCI Distribution List"

Sign up now! No need to wait until you receive your grades. Mme Jobs, our beloved bimonthly newsletter, does not flood all students with information and reminders about specific recruitment processes – that is why you must sign up for your OCI process of choice. (Please refer to the title of this article again!)

4) Plan ahead

We can't stress this enough: OCIs will require you to research employers, write documents, and submit applications during summer.

In the case of US OCIs, you will actually have to attend interviews during the summer, too! So you should plan on being in Montreal starting in mid-August. The OCIs will be held on either August 21st or 22nd and Interview Prep Day will take place the week before. (Yes, this may interfere with your summer plans... time to prioritize!)

- For students who will be in the GTA this summer, we will send info to the Toronto distribution list about all of the different events at firms.
- Also, we have a networking and interview preparation workshop planned on March 20th with recruiters from New York, including 3 OCI participants and 1 resume collection participant. Eligible students interested in applying to these firms will need to demonstrate their sincere interest should they get an interview, so we strongly suggest they participate in this event as evidence!
- As of January 2015, candidates will need to have completed 50 hours of Pro Bono work between the beginning of their law studies and the time they apply to the New York Bar. This includes activities such as legal clinics and clerkships. Keep this in mind if you're graduating in December 2014 and think you would like to take the New York Bar.

5) Be patient

Relevant information will be added to the CDO website and sent to the distribution lists as soon as it becomes available.

We look forward to working with you throughout these processes should you hop in. If not, we want to remind you that we are also available if you want to discuss career options that fall outside the OCI process.

MBLA

MBLA CARES
A 2012/2013 INITIATIVE

The McGill Business Law Association (MBLA) is one of the Faculty of Law's largest student-run clubs. It provides a productive and effective forum for McGill law students and law firms to get acquainted. Through hosting conferences at Montreal's leading law firms and at the faculty, students can learn about topical business law issues and the practice of corporate law from experts in the field as well as develop a professional network.

This year, we wanted to expand the MBLA's mission and use this platform to give something back to the community. To this end, we founded MBLA Cares. Through hosting a Movie Night, Valentine's Day Cupcake Sale, and various law firm sponsored events, the MBLA raised just under $2,000 for numerous charities during the 2012/2013 academic year. Proceeds from our fundraisers benefit the Alexandra Dodger Fund, the Montreal Children's Hospital Foundation, Dans la Rue, and the Segal Cancer Center of the Jewish General Hospital.

We thank all of you for your generosity. We hope our MBLA Cares initiative, in some small way, has made a difference and that this mission will be continued in future years, making it part of a tradition of giving.

Your MBLA team

Howard Cohen, Wayne Burke, Tanya Nakhoul, David Plotkin, Erica Sanders & Kadriye Merve Bilgic

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Law II

HOWARD COHEN

THANK YOU TO THE DEAN'S DISCRETIONARY FUND

Over the holiday break, I represented our Faculty, McGill and Canada at the World University Public Speaking and Debate Championships in Berlin, Germany. I would sincerely like to thank the Dean's Discretionary Fund for their financial support.

At this event, seasoned debaters and public speakers from universities around the world congregated for several intense days of competition. It was a multi-cultural and eye-opening experience as the tournament hosted 1,400 participants from 82 countries who shared a passion for constructive dialogue. All topics were fair game, with issues ranging from law to international affairs to finance.

Most of our time was devoted to the competition, but who could resist the temptation of touring a European city? I visited the Brandenburg Gate, Checkpoint Charlie and the Holocaust Museum. And who could forget the German pretzels, beer and sausages! But the real meat was in those debate rooms, where speakers clashed about the European debt crisis, white collar crime, intellectual property rights and more.

After months of intense preparation, I was fortunate to have had the opportunity to represent our Faculty, McGill and Canada in the World Public Speaking Finals. Thank you, Dean's Discretionary Fund, for giving me this opportunity.

Frequently Asked Questions

Q. What am I required to wear to the Call ceremony and in court?

A. A traditional Barrister's Robe and Waistcoat, as well as a Wing Collar shirt and formal Legal Tabs. Court Stripe, dark grey or black trousers/skirt are acceptable.

Q. Who pays for my court attire?

A. The cost of your cort attire is your responsibility. However, many law firms will either reimburse you or make payment directly. Check with your particular firm regarding specific policy. A deposit is required with all orders billed to individuals. Visa, Mastercard or cheque are accepted. Debit Cards can be used in-store.

Q. Can I rent basic court attire?

A. Yes. The special "Call to the Bar" rental fee is $95.00 and includes everything except pants or a skirt. If you decide to buy a gown and waistcoat from Harcourts within one year, the fee is credited against the purchase price from our regular price list.

Q. When and how will I receive my order?

A. Usually within 6 to 8 weeks. Always before the call ceremony, providiing the order is placed before our last deadline. Orders will be shipped anywhere in Quebec via UPS at a special Bar Admission flat fee of $25.00 each.

HARCOURTS

Call us today at (416) 977.4408 and allow us to show you how individual attention to detail characterizes Harcourts excellence.

Recommended Additional Items:

	REG PRICE	CALL PRICE
100% Cotton Wing Collar Shirt (stock size):	86.65	53.50
Poly/Cotton Blend Wing Collar Shirt (stock size):	63.55	40.50
100% Cotton Wing Collar Shirt (made to measure):	128.65	93.50
Poly/Cotton Blend Wing Collar Shirt (made to measure):	105.55	81.50
Barrister Dickie (wing collar with tabs):	52.00	36.60
Barrister Tabs, double-ply poplin:	11.55	10.25
Trousers, 100% wool (court stripe, black or charcoal):	213.70	116.25
Skirt, 100% wool (court stripe, black or charcoal):	147.00	109.75
Skirt, poly/wool, black:	136.50	92.75
Barrister Robe Bag, blue velvet, w/ 4 Initials:	99.75	66.00

Accessories:

Cuff Links, Law Society:	75.00	65.00
Cuff Links, Scales of Justice, black or gold:	80.00	73.50
Leather Tab Case:	65.00	50.00
Suspenders, six-point:	36.75	30.00
Vinyl Garment Bag:	21.00	16.80

Pricing valid ONLY with purchase of CALL TO THE Bar Package
Any accessory item, such as extra shirts, cuff links, etc. will be offered at a 10% discount during the Call to the Bar.

Harcourts • 19 Duncan Street • 3rd Floor • Toronto • M5H 3H1 • info@harcourts.com

Quebec Call to the Bar *packages*

PACKAGE 1 — $330.00

Puritan Cloth (Poly/Viscose)
Barrister's Gown and Waistcoat
Poly Cotton Wing Collar Shirt
Legal Tabs
Garment Storage Bag

PACKAGE 2 — $380.00

Blended European Wool
Barrister's Gown and Waistcoat
Poly Cotton Wing Collar Shirt
Legal Tabs
Garment Storage Bag

PACKAGE 3 — $450.00

100% Pure European Wool
Barrister's Gown and Waistcoat
100% Cotton Wing Collar Shirt
Legal Tabs
Garment Storage Bag

PACKAGE 4 (RENTAL) — $95.00

Combination Gown and Legal Shirt Front

Should you purchase a gown and waistcoat from Harcourts within the year, the rental fee is credited against the purchase price from our regular price list.

ALLOW 4-8 WEEKS FOR DELIVERY

Pricing for packages includes stock size shirts only.

Orders will be shipped anywhere in Quebec via UPS for a special Bar Admissions flat fee of **$25.00.**

Subject to change without notice.

HARCOURTS

Call us today at (416) 977-4408 and allow us to show you how individual attention to detail characterizes Harcourts excellence.

Customer Information

Name: _____

Address: _____

City: _____ Prov: _____ Postal Code: _____

Phone: _____ Fax: _____

MEASUREMENTS

Shirt / Blouse Size: _____ Waist: _____

Height (in shoes): _____ Seat: _____

Bust / Chest Size: _____ Skirt / Pant Length: _____
(waistband to hem)

Credit Card ❑ Visa ❑ Master Card

Number: _____ Expiry: _____

Signature: _____

NOTE: Dealer pricing may vary and measurement fee applied.

Harcourts • 19 Duncan Street • 3rd Floor • Toronto • M5H 3H1 • info@harcourts.com

Law III

VERBA DOCENT, EXEMPLA TRAHUNT: INTRODUCING THE ALUMNI MENTORSHIP PROGRAM

Good news, everyone! While you were enjoying last summer in exotic locations, the beautiful view from the NCDH 4th floor offices inspired a wonderful idea to the hardworking folks at SAO and CDO. Why not offer a mentorship program tailor-made for law students? Several months have passed and the idea has now blossomed into the brand new Alumni Mentorship Program. Sounds interesting? Wait until you hear all about it!

Enough with the Latin

For those of you who have resisted using your smartphone to look up the meaning of the phrase in the title, here is the translation: WORDS INSTRUCT, EXAMPLES LEAD. In my opinion, this proverb correctly summarizes the raison d'être of the Program. Some things are better taught outside of a classroom, and the best teachers are often those who have once stood where students are standing right now. Hence, mentoring is an ideal means of complementing formal legal education.

Une nouvelle avenue de développement professionnel et personnel

Grâce à la nature bijuridique et bilingue de leur formation juridique, les diplômés de la Faculté de droit de l'Université McGill sont confrontés à une gamme impressionnante d'options de carrière. Faute de conseils appropriés, certains peineront à trouver leur voie dans le monde du travail. Le Programme de mentorat des anciens vise à établir des ponts entre les générations présentes et futures de professionnels issus du milieu juridique dans le but de créer une communauté vivante et rayonnante où mentors et mentorés pourront croître sur les plans professionnel et personnel. En partageant leur expérience, les anciens guideront les étudiants actuels dans leurs choix académiques, leurs activités de réseautage et leur exploration de carrière.

The Program is inspired by those running in several other Canadian and American law schools, as well as by the Mentor Program offered by CaPS, McGill's own Career Planning Service.

Matching

You must all be wondering: how much effort will I have to put towards getting an alumni to mentor me? The answer is surprisingly: very little! Matches will be made using your academic and professional background and interests as well as your diversity affiliations based on a form you will have to fill out as well as on your résumé. There will be no interview, no letter of intent and no alumni-stalking on your part.

Notre première cohorte

L'inscription au Programme sera ouverte aux étudiants de premièr année à la session d'été afin que le mentorat commence dès le pre mier semestre de leur deuxième année. Cela signifie que les étudiants admis en septembre 2012 seront les premiers à pouvoir participer. J'entends déjà grogner mes collègues de 2e, 3e et 4e an nées. Pourquoi limite-t-on ainsi la participation au Programme?

Eh bien, il faut garder en tête que le Programme en est à ses débuts; aussi voulons-nous être en mesure de bien coordonner les re lations mentorales. De plus, nous sommes d'avis que la deuxième année est le moment le plus propice au mentorat. En effet, les étudiants ont alors une certaine familiarité avec le droit. Ils sont par contre souvent indécis quant à leur choix de carrière. Pour plusieurs, avec la Course aux stages, il s'agit d'un point tournant. C'est donc un moment où les étudiants ont des questions et cherchent des réponses. Voilà pourquoi nous avons dû trancher. Bien que cela soit une maigre consolation pour les étudiants qui auront alors obtenu leur diplôme, nous comptons offrir le Programme à tous les étudiants d'ici quelques années si cela s'avère réalisable.

Mentorship for Dummies

We can't overemphasize the importance of being proactive as a mentee. Having a mentor is not a panacea to all your academic, professional and personal doubts and ills. Mentors are not academic advisors, nor are they psychologists, therapists or tutors. In order to help you, they need to know about you and to feel that you are committed to your objectives. They are not friends you can just call when you are blue. They are not life coaches paid to pick you up and get you going. To wit, a study labeled lack of clear goals and absence of motivation as the number one turnoffs for mentors (1) . Think about it before you sign up.

Once a mentor is assigned to you, you must take the helm. You are responsible for the relationship. Your mentor has a heap of knowledge he or she is ready to share with you. In order to get access to that precious know-how, you will need to think about your personal and professional goals. We have prepared materials specifically designed to help you plan the relationship ahead. Everything will be made available to you at the time of registration.

So, where do I sign?

This article is merely a teaser. Students in their first year will be able to register in the summer semester via an online form available on the SAO website.

À partir d'aujourd'hui, vous avez environ deux mois devant vous pour mettre la table de votre relation mentorale. Réfléchissez à vos objectifs. Assistez aux ateliers de formation pertinents. Commencez à réseauter avec vos collègues par les clubs et les associations. Saisissez les occasions de rencontrer des anciens et des professionnels du milieu juridique. Somme toute, profitez bien de votre premier été à la Faculté.

Keep an eye on your emails to find out when the program will be launched. We are looking forward to counting you as a member of the first cohort of mentees this coming September. Make us proud!

Cordialement,

Mathieu Letendre , Alumni Mentorship Program Coordinator (Summer 2012)

For questions, comments or information, you may contact

alumnimentors.law@mcgill.ca.

(1) RP Schlee, "Mentoring and the professional development of business students" (2000) 24 Journal of Management Education 322.

CURRICULUM COMMITTEE TOWN HALL

On Feb 20th, the Faculty's Curriculum committee student representatives held a Town Hall session to discuss issues such as course offerings, administration-student body communication and student-led seminars. À l'aide d'un délicieux dîner pizza, la salle 100 (Moot court) a été le théâtre de discussions très enrichissantes en compagnie d'étudiants chaleureux et engagés.

The Town Hall session was organised as a response to a resolution passed at last October's LSA Annual General Meeting, in which it was agreed that the committee's student representatives were to canvas students' opinions on course offerings and improvement of student input in the Faculty's curricular decisions. It was also a great opportunity for us to share a bit of what the Curriculum Committee has been up to so far this year, from approving a new course proposal to dynamic exchanges on student-led seminars' raison d'être.

Les étudiants participants nous ont notamment signifié leur désir de voir plus de transparence au niveau de la procédure entreprise pour recueillir des suggestions pour l'offre de cours. Ainsi, des suggestions telles qu'un sondage, à effectuer plus tôt dans l'année pour identifier plus tôt les cours en demande accrue, des consultations publiques plus fréquentes et une période désignée d'avance pour soumettre ses demandes, ont été avancées. Celles-ci complémenteraient les rencontres qui ont déjà lieu entre les représentants de l'AÉD et l'assistante doyenne académique au moment de se pencher sur l'offre des cours complémentaires.

In addition, because student-initiated seminars are currently a topic of discussion at Curriculum Committee and students generally have shown much interest, we sought feedback to best understand and represent student opinions in the ongoing discussions.

We heard support for a robust presence of student-initiated seminars in the curriculum as a valuable space for student voices and engagement in a particular topic – including topics that have tended to be marginalized. It was raised that these seminars can help maintain a diversity of subjects and voices without exhausting limited Faculty resources.

Certains étudiants ont aussi exprimé un désir que les professeurs et les étudiants-organisateurs soient davantage reconnus pour leurs travaux; actuellement les professeurs qui supervisent ces séminaires le font gratuitement, et les étudiants qui organisent reçoivent les mêmes 3 crédits que pour la simple participation au séminaire en tant qu'étudiant enregistré.

Reprenant un thème récurrent, les participants à l'assemblé nous ont communiqué un fort désir pour de la clarté et de la transparence lors du processus de sélection des séminaires qui seront offerts par la faculté. Les critères sont actuellement vagues et imprécis; la rédaction d'une application est alors difficile à rédiger.

The Curriculum Committee is in the process of establishing a clearer set of rules for how student initiated seminars are to be administered, and clarifying the desired role of these seminars in the broader curriculum. We will be bringing the student interests raised at the town hall into the committee's discussions and welcome any further feedback.

Thank you again for coming!

Marc Roy, Rosel Kim, Alexandra Belley, your Curriculum committee student representatives

LEGAL CLINIC COURSE COORDINATOR

KIRBY SMITH

CALL FOR APPLICATIONS LEGAL CLINIC COURSE

CALL FOR APPLICATIONS/APPEL DE CANDIDATURES: MCGILL LEGAL CLINIC COURSE 2013-14 & INFORMATION SESSION ON MARCH 13 at 12:30 pm.

Attention 2Ls and 3Ls! Community Legal Clinics in Montreal are now recruiting students for the Summer 2013, Fall 2013, and Winter 2014 semesters.

Les étudiants doivent avoir complété au moins quatre (4) sessions en droit avant le commencement de leur participation au cours de Clinique juridique.

Application deadline for ALL semesters is Wednesday, March 27rd, 2013 at 3 p.m via email to mlcc.law@mcgill.ca. Please see the updated Legal Clinic Course application booklet for more information on the SAO website: http://www.mcgill.ca/law-studies/.

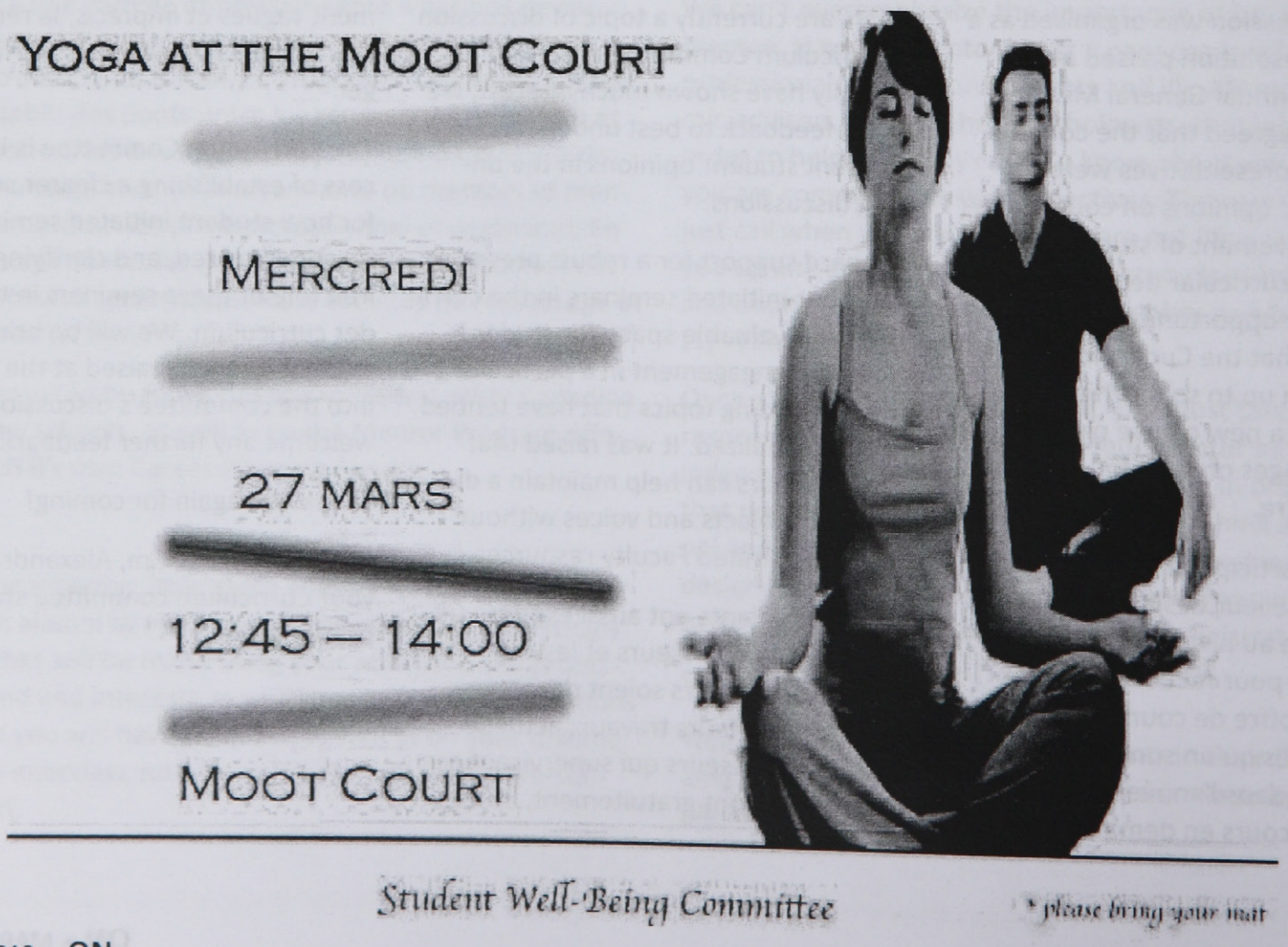
Date limite pour poser votre candidature pour TOUS les cours (été, été-automne, automne, hiver, année universitaire): Mercredi le 27 mars 2013 à 15h00.

The Legal Clinic Course (LCC) gives students an opportunity to enrich their legal education through practical work experience in law-related fields. Students work in various community organizations and legal clinics providing legal information and assistance to socially disadvantaged individuals and groups.

The course promotes a deeper understanding of the legal system's response to poverty and inequality. Students are confronted with the social reality of access to justice and the interrelationship between legal concerns and economic, psychological, ethical and other social problems. The course also allows students to pursue work in organizations devoted to promoting and researching public interest law.

Depending on the choice of organization, students will be exposed to a variety of legal areas. These areas typically include family, consumer, criminal, income security and social welfare, landlord-tenant, worker's compensation, unemployment insurance, immigration, environmental and human rights.

Si vous avez des questions, n`hésitez pas à contacter Kirby Smith, la coordinatrice du Cours clinique juridique par courriel : mlcc.law@mcgill.ca. Merci beaucoup de votre intérêt!



Interested in immigration or refugee law?

Come to the Human Rights Working Group's annual Speed Meet!

MARDI, LE 26 MARS
18h00 – 20h00
Dans l'atrium

RSVP to immigrantandrefugeerights@gmail.com by March 23

Venez rencontrer des praticiens qui travaillent dans différents secteurs du droit de l'immigration et des réfugiés, tels que le gouvernement et les grands cabinets, ainsi que des praticiens indépendants.

Special thanks to the CDO for sponsoring this event!

hrwg

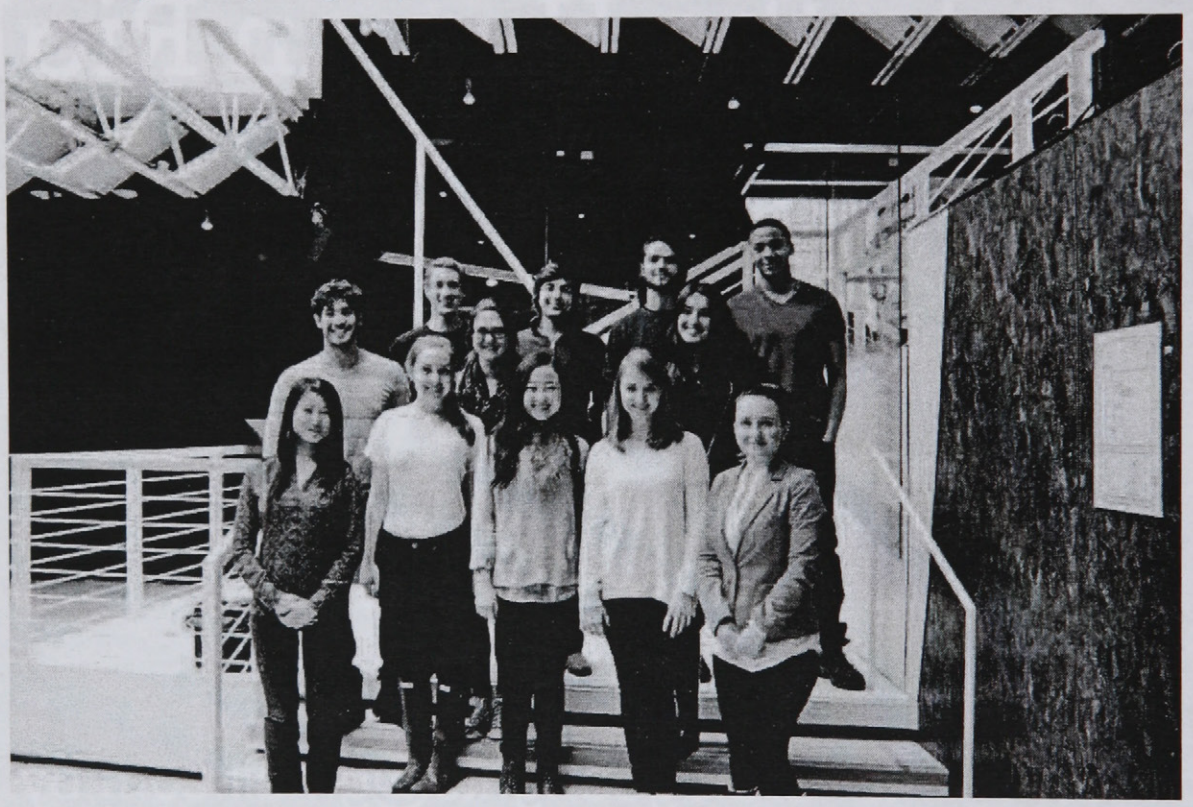
gamdp

CDO
CAREER DEVELOPMENT OFFICE
DROIT McGILL LAW

ARIANE H. SIMARD

THANK YOU DDF!

From February 14 to 17, sixteen McGill law students embarked on an adventure to Boston to defend McGill law's honour at the Harvard National Model United Nations conference. Unabashed by the unfavourable bias of being a Harvard newcomer and the traditional antipathy between McGill's MUN and Harvard organisers, the McGill Law Model UN team nonetheless established its presence as small but resourceful Cameroon. Perhaps even paving the path for a McGill-Harvard truce, our delegation paid tribute to the reputation of McGill Law through numerous PR sessions and intense diplomatic debates.



Although we did not earn one of the very few awards this year, it is safe to say that MLMUN achieved small victories within its committees. In the Disarmament and International Security committee, amongst others, our delegates put their lawyerly discourse skills to good use by presenting thought-provoking speeches that made Cameroon a central player in the committee.

In the Global Health Committee (GHC), our delegate representing the Center for Disease Control and Prevention (a USA federal agency) not only started a committee crisis by funding Middle-Eastern mullahs to support its initiatives, thus provoking Middle-eastern riots and hostage-taking of the GHC, but was actively involved in the Return of the Good Mullah/Mullah Awakening Initiative 2 resolution which ultimately passed.

In the Special Political and Decolonization committee, Cameroon headed two resolutions. Although the committee did not pass a resolution in the end, Cameroon worked hard in convincing the African Union of its national position, which was reflected in the preferred resolution.

All in all, the McGill Law team left its mark in each committee. Harvard was a challenging experience, for many the most demanding Model UN conference yet. An extremely realistic insight into the diplomacy aspect of International Law, Harvard National Model UN was for all a valuable preparation for potential careers in Public International Law. We hope to continue expanding the team in order to allow more students this opportunity.

A great thank you for this wonderful experience is owed to the Dean's Discretionary Fund. Without its precious financial support, our team would not have been able to attend this extraordinary albeit costly conference. The contribution of the DDF allowed us to pay the price of travelling to Boston, thus enabling us to make priceless gains in new-found knowledge and memories.

Participants: Alexander Sculthorpe, Antoine Grondin-Couture, Alexandra Bornac, Arad Mojtahedi, Ariane Simard, Aude Florin, Catherine Le Guerrier, Julia Blais-Quintal, Justin Fisch, Kyle Best, Marie-Laurence Basque, Marvin Coleby, Marwan El-Attar, Sarah Kettani, Weihe Feng, Xiaocai Fu

(some members missing from picture)

CATHERINE LE GUERRIER

THINGS I LEARNED IN BOSTON

Vous trouverez reproduit ici, vraisemblablement tout près de cet article, le compte-rendu officiel du voyage à Boston du club Model UN, rédigé par notre merveilleuse collègue et VP finances Ariane. Si je seconde chaque mot de sa déclaration, il reste que son article ne semble pas refléter toute la diversité de l'expérience que moi et mes co-délégués avons vécu à Boston.

This is understandable, as she is writing her article in order to comply with the requirements associated with receiving some funding from the Dean's Discretionary Fund. I, luckily, have no such requirements to respect, and am writing this for the sheer pleasure of sharing with you. Hopefully, this gesture won't taint our very respectable adventure with such ridiculousness as to cost us aforementioned funding for the years to come...

1. Comment porter un veston.

Ce voyage a réussi à me pousser à un niveau de sérieux qu'en toute une vie d'entrevues et de rencontres fort sérieuses je n'avais jamais auparavant atteint. J'ai acheté un veston, et j'ai écouté avec attention les instructions données par le vendeur sur comment le porter, avec quoi, et lors de quelles occasions. Thank you Boston. I am now employable.

2. You can wear your Mom's shoes to formal events. No one will notice.

Because I couldn't afford buying shoes as well as a classy vest. Not only was I not shunned by the female half of the Model UN conference for wearing sort of square shoes rather than nice round ones, I received compliments for those shoes. And my toes weren't killing me, because Moms (or at least my Mom) like comfort.

3. I don't know all the countries in the world.

Where the heck is Tonga?

4.L'accent de Boston est merveilleux.

Malheureusement, je n'ai pas eu la chance d'entendre beaucoup de natifs de Boston s'exprimer. Après avoir compris que toutes les indications qu'ils allaient nous donner allaient être chiffrés en miles plutôt qu'en kilomètres, nous avons abandonné la plupart de nos tentatives de communiquer avec eux. Reste que cinq jours passés à Bawstun fournissent une belle excuse pour faire semblant que nous le maîtrisons.

5. McGill Law isn't really that competitive.

Never, within these faculty walls, had someone insisted in meeting me at 9:00 AM in order to "prepare" for a meeting taking place at 1:30 in the afternoon. Never in my life had the word "prepare" been used to mean "put together the 8 to 10 pages each of us will have spent the night drafting separately". This definition being implied, of course. Why be explicit about the work expected? Who thinks nights are for sleeping anyways?

6. If you make your policy into a cool acronym, no one will reject it.

I mean, who could disagree with creating the Arab League Against Defamation and Discrimination International Network?

7. On ne peut désapprendre le droit.

Un gardien de sécurité est entré dans l'une de nos chambres sans avertissement parce qu'il trouvait que l'on faisait trop de bruit? Il a violé notre attente raisonnable à la vie privée. Point barre.

8. Marshalls over Winners. Anyday.

Not that I could testify personally. But having seen more Marshall bags than UN Draft Resolutions being carried around by my co-delegates, I believe I must simply incline before this apparently universal truth I was asked to transmit.

9. Les taxis de Boston sont quasi-identiques aux voitures du SPVM.

Jamais je ne reverrai mes collègues de classe-chauffeurs respecter les limites de vitesse avec autant de zèle.

10. What Cardozo looks like.

Granted, I could have Googled that one. Still, nothing beats the experience of finding a bronze bust of this notorious judge while wandering around the Harvard Law library. I was so eager to take a picture with it I almost knocked it off its pedestal.

11. People in the Bahamas drive on the left.

This I discovered as our beloved driver attempted to engage on the obviously one-way exit belt of a highway. We all love you Marvin. But never do that again.

12. Don't be ashamed to suggest playing vocabulary-oriented games to your classmates. They'll love it.

Being aware that not all young adults consider a board-game night to provide as much fun as a party, I tend to hide from others the fact that, well, I do. But facing the threat of a six-hour drive devoid of any source of entertainment beyond watching our pilot and co-pilot fight like an old couple, I dared to teach my road-trip buddies a little game. Which we played for 3 straight hours. And kept every one of us awake for the entire drive. So, don't hide your inner nerd. It makes you forget that others too might believe that contact is the best game ever.

KE-JIA CHONG

MCGILL ARBITRATION SOCIETY RELIGIOUS ARBITRATION

On February 26, 2013, the McGill Arbitration Society and the Institute of Comparative Law held a panel discussion on religious arbitration featuring speakers Rabbi Michael Whitman speaking on Jewish (Talmudic) law and Professor Ahmed Ibrahim speaking on Islamic law, moderated by Professor Natasha Bakht from the University of Ottawa. The event was well attended by students from within and outside the law faculty, as well as individuals in the community.

Professor Bakht discussed the controversy of religious arbitration, which began in Ontario in 2004, where a group of Muslims in Toronto decided Sharia law could be used to resolve family matters as per the choice of law provision in the Ontario Arbitration Act. Sharia was seen as an automatic derogation of women's rights despite, as Professor Bakht explained, the multiple interpretations of Sharia and feminist interpretations of Sharia. The uproar resulted in amendments to the Act making explicit that arbitration is allowed as long as the law of a Canadian jurisdiction is chosen. According to Professor Bakht this allows for much flexibility and religious arbitration is not actually outlawed.

The panel discussed the interaction between religious divorces and Canadian law. Section 21.1 of the Divorce Act requires litigants to remove religious barriers to remarry if they are to get a civil divorce. When a Jewish man does not give a Jewish divorce to his wife, this results in the woman becoming an agunah, a chained woman, who cannot remarry. Rabbi Whitman discussed that section 21.1 allowed for an 85% reduction in abuse of Jewish divorces without infringement on constitutional rights or disruption of public interest. The problem is that this section is not consistently applied by judges and lawyers.

Rabbi Whitman said a halachic prenuptial agreement which requires the husband to give a get would solve the problem of agunah. If the husband is recalcitrant, then since Jewish law obligates the husband to support his wife financially and he still holds on to this marriage, he must give maintenance – a financial amount per diem. Secular courts in the US have been able to impose this financial payment. However, Rabbi Whitman has been advised that a Canadian version of the agreement would not allow for a financial component. He believes that both Jewish law and Canadian law can work together to prevent further tragic situations of women unable to get a Jewish divorce.

The panel expanded on the interaction between religious contracts and the law. A mehr in Islamic law is a dower given by the husband to the wife as promised in their marriage contract and payment is deferred until the couple divorces. Professor Ibrahim cited a Kansas case where anti-Sharia legislation impoverished the woman. The woman getting a divorce due to domestic violence was able to get a divorce but not the dower, worth over half a million dollars. In another case in New York, a dower agreement between an American Muslim and Egyptian Muslim was enforced since there was no anti-Sharia legislation.

Following the Supreme Court of Canada's decision in Bruker v Marcovitz, the matter of religion in contractual interpretation would seem to be settled. However Professor Bakht argues that the question now is whether the contract must meet the heightened requirements of a marriage contract, or simply that of an ordinary contract. As women and children are often left in poverty when a marriage is dissolved, she believes the dower is another important tool to combat poverty and that courts should make it as easy as possible for women to receive this amount through an ordinary contractual standard.

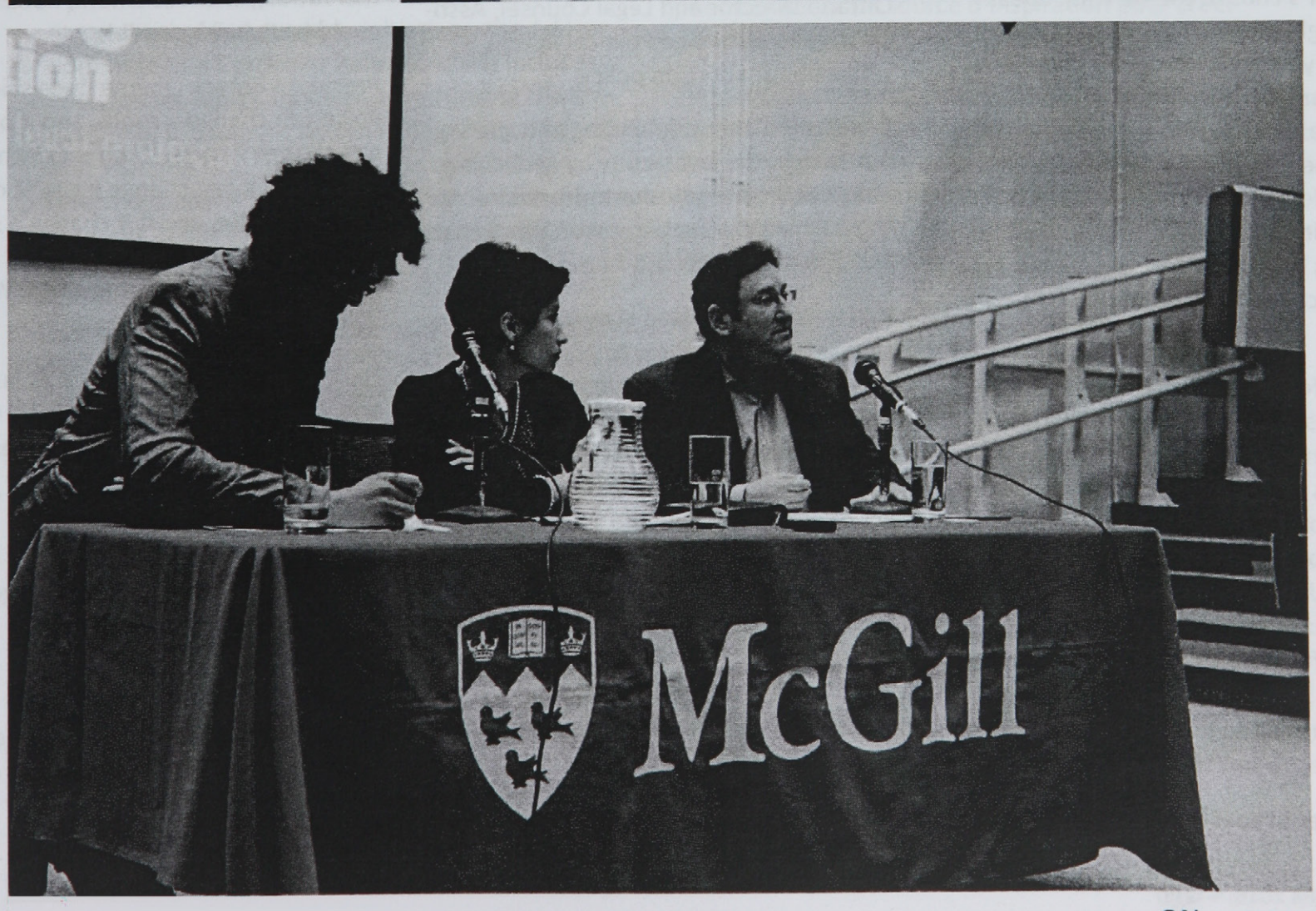
One audience intervention raised the critique that many groups that promote application of other laws may be conservative, and therefore protection is needed against this. In response, Rabbi Whitman said that it was important for there to be differences in opinion in the community for activism to bring out the best solutions in the end. Professor Ibrahim did not consider religious law to be a threat to Canada and that judges would, in any event, provide safeguards by overruling anything against public order.

Professor Bakht raised several important points: during the Ontario debate, some feminist organizations were concerned about vulnerable parties, and many Muslims felt that family arbitration was not of interest to them. However, others felt that by labeling them as a vulnerable party, there is the implicit assumption that women cannot make these agreements for themselves, despite being educated, born and brought up in Canada, and wanting to live their lives religiously. It is unfair to assume that a woman would be duped and cannot consent.

Moreover, family law allows for opting

out of the default regime, and courts do not question this. Within provincial regimes, property by default would be split 50/50 but a domestic contract, separation agreement or prenuptial could provide for a 70/30 split simply because the parties chose it to be this way, or because one person brought in more property. Courts have upheld these splits and there is not a question of fairness of the content so long as the process was fair: that parties were voluntarily entering the agreement and received independent legal advice. Professor Bakht expressed concern of over-policing religious couples when society does not do so for other couples.

The McGill Arbitration Society thanks the Law Student Association for helping to fund the event.



CLSA

SIMONE SAMUELS & NADIA TONGE CHERNAWSKE

SPEAK UP! NATIONAL CHRISTIAN LAW STUDENTS CONFERENCE

""Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy."

Proverbs 31:8-9

On February 14, over 30 students from as far west as the University of Alberta and as far east as the University of New Brunswick descended on the Faculty of Law at McGill for the National Christian Law Students Conference hosted by the Christian Law Students' Association at McGill and the Christian Legal Fellowship (CLF). CLF is a national not-for-profit, charitable organization with a membership consisting of law students, lawyers, judges, and law professors. Among other functions, CLF explores the complex interrelationships between the practice and theory of law and Christian faith. This was the first time the conference was held in Quebec.

This year's chosen theme was "Speak Up!" highlighting the unique platform that lawyers have in society. Ours is an ever-changing world fraught with moral dilemmas and issues that challenge our faith. The education that we receive as law students gives us a privileged place and position in society and an opportunity to speak up and speak out – an opportunity which we must not – cannot – pass up.

The conference kicked off with a "welcome session" with food and games at Thomson House. For the next two days, students were saturated with knowledge about how to integrate their faith in their profession and use law as ministry to "Speak Up!" Pastor Omar Jarvis of the Norwood Seventh-day Adventist Church kicked off the conference with a sermon entitled, "The Sound of Silence." He boldly suggested that "God is silent because we are not speaking."

The roster of speakers and panelists could only be described as impressive. Barry Bussey, Vice-President Legal Affairs, Canadian Council of Christian Charities expounded on the theme, giving wisdom about speaking up in public and anecdotal advice. Simone Samuels, a law student at McGill, led in an animated discussion on mental health strategies for law students, and Russell Browne, executive director of CLF, spoke about mental health and clients. Grace Mackintosh, legal counsel for the Seventh-day Adventist Church in Canada, spoke about religious liberty issues in elementary school curricula and Soorena Noori spoke about the Iranian church and the persecution of religious minorities in the Middle East. After Professor Margaret Somerville spoke about the legal issues and concerns regarding euthanasia, Me. Bob Reynolds, who served as an intervener for CLF in the Ginette Leblanc assisted-suicide case, expounded on the jurisprudence. André Schutten, Ontario Director and Legal Counsel, Association for Reformed Political Action, spoke about abortion policy.

We learned about defending and sharing our faith in the law faculty by McGill law alumnus Stephen Wishart, prosecutor for the Barreau du Quebec, who told us that "faith is never divorced from reason."

Karen Henein, a noted lawyer, author, and speaker, taught us how to practice with purpose, while Hovsep Afarian, a lawyer at McCarthy Tétrault, taught us how to be good stewards of our time, talent, and treasure. He said that "stewardship is the act of organizing your life so that God can spend you." We also discussed the current possibility of having a Christian law school with Dr. Janet Epp-Buckingham, Associate Professor at Trinity Western University and Director of the Laurentian Leadership Centre. There was also much emphasis on fellowship and prayer.

On Friday night, students and lawyers took advantage of Montreal's food scene and travelled to Schwartz Hebrew Delicatessen for some smoked meat sandwiches, while other students went to La Banquise for poutine. On Saturday evening, conference participants attended a gala evening at the Best Western Ville Marie where Hon. David Kilgour, retired Member of Parliament, delivered a rousing keynote speech entitled "Christianity in Today's World," giving examples of Christians who, often in the face of abject persecution and death, stood up for their beliefs and the well-being of those around them. On Sunday, we worshipped together at the People's Church Montreal before each person began their journey home.

The CLSA is indebted to its sponsors and the support of the Faculty (in particular the McGill Law Students' Association, the Career Development Office and Dean Daniel Jutras), without whom, none of this could have been possible.

President Barack Obama once said, "One voice can change a room, and if one voice can change a room, then it can change a city, and if it can change a city, it can change a state, and if it change a state, it can change a nation, and if it can change a nation, it can change the world. Your voice can change the world."

Here's hoping that our voice as lawyers and law students, united in faith, will change this world and usher in the world to come.

In His Service and at Yours,

Simone Samuels and Nardia Tonge Chernawsky

Co-Presidents

Christian Law Students' Association at McGill/Association des étudiants chrétiens en droit à McGill

Professeur

HOI KONG

AN UPDATE ON THE LAW TEACHING NETWORK

Cette année à la Faculté de droit, les professeurs ont fait progresser, en collaboration avec le Service du soutien pédagogique, le programme du « Law Teaching Network ». On a créé quelques regroupements de professeurs ayant comme objectif le partage des pratiques et des idées d'enseignement. Notamment, l'un de ces regroupements vise à donner l'occasion aux professeurs de comparer leurs stratégies pédagogiques. Several professors have introduced changes to their courses as a direct result of feedback they have received in this forum. In addition, professors have begun to experiment with visiting one another's classrooms in order to exchange observations about teaching. The program has also supported initiatives in individual courses that have provided students with active learning experiences, ranging from field trips to visits from speakers who share on-the-ground insights about specific areas of law.

At the level of Faculty-wide initiatives, the Ad Hoc Committee on Curricular Reform, which includes two student representatives, is rethinking the undergraduate program and the Clinical Legal Education Working Group is engaged in continuing reflections about how to disseminate information to students about the experiential learning opportunities offered by the Faculty.

En outre, nous avons organisé deux ateliers qui portent sur certaines des priorités de la Faculté en matière d'enseignement et d'apprentissage : à savoir, les traditions juridiques et l`interdisciplinarité. En ce qui concerne le premier, nous avons eu le plaisir d'inviter la professeure Val Napoleon de la Faculté de droit de l'Université de Victoria qui a présenté son texte intitulé « Indigenous Law in the World : Research, Pedagogy and Application ». Sa présentation a suscité une vive discussion à propos de la possibilité d'enseigner le droit des autochtones d'une manière trans-systémique. Quant au deuxième, il aura lieu au mois de mai. Nous sommes ravis d'accueillir le professeur Josh Cohen de l'Université Stanford et la professeure Julie Haack de l'Université d'Oregon. Le professeur Cohen fera une présentation sur le programme « Liberation Technologies » qui réunit plusieurs disciplines, dont le droit, la science politique et l'informatique. La professeure Haack fera un exposé portant sur le programme du « Green Product Design Network » dans lequel des étudiants et professeurs de plusieurs disciplines examinent des approches innovatrices de conception durable des produits. Nous espérons que ces deux programmes pourront servir de source d'inspiration pour créer des cours interdisciplinaires semblables à McGill.

The Law Teaching Network aims to keep McGill on the cutting edge of pedagogical practices. This year's program reflects the ongoing commitment of professors and the administration to ensuring that our students are the beneficiaries of the very best legal education possible.

If you would like to read reflections by individual professors on teaching and learning, please see http://www.mcgill.ca/law/teaching and for a full list of student committee representatives, please see http://www.lsa-aed.ca/about/committees.

INNOCENCE MCGILL

INNOCENCE MCGILL'S ANNUAL FINANCES

As per article 83 of the LSA By-law 12 on Student Initiated Fees, Innocence McGill (IM) provides this brief summary of its activities, financial and otherwise, during the 2012-2013 academic year. During the fall, IM recruited new members, prepared for the referendum on student fees, continued to work on our clients' files, prepared for and began an outreach campaign, and prepared for our February 2013 conference. During the Winter 2013 semester, we have continued our regular work on our clients' files, hosted a successful conference with David Milgaard and Peter Edwards on February 12, 2013 and continued our outreach efforts. Our conference was paid for by IM funds (all of which came from student fees collected each semester since 2006, with the exception of the Fall 2012 semester) and with a generous donation from the Dean's Discretionary Fund which helped us cover the transportation and hotel costs involved with bringing our speakers to Montreal. The majority of our spending this year was on the conference. The rest of our spending consisted of outreach efforts (printing IM brochures), office supplies (computer paper, printer ink, etc.) and mailing costs. Given our clients are incarcerated, we must communicate with them by regular mail. On March 11, we were notified by the LSA that our student fees from this semester had finally come through and we collected our cheque for $2665. This money will go towards future IM conferences, outreach efforts, office and mailing supplies, and other expenses deemed reasonable by future Innocence McGill members and directors. Thank you to the law school student body for their support of IM. For those interested in becoming a member of IM, sometimes we take on new members in the summer. Email innocence.law@mail.mcgill.ca in early May if interested in summer opportunities. For those interested in becoming a member in September, please check Notice Board and the hallways next fall.

Law II

JONATHAN BROSSEAU

ENFANCE_01

peau café latté cheveux dorés robe
blanche dès lors la mer voulait tout les
vacances d'été à la plage vaste
infinie comme nos secrets hors de
l'univers je te dis l'incendie de
juillet c'était nous et un vent si fort
te rappelles-tu ces arbres brisés
sur le bord de la route de campagne
où nous faisions du vélo comme dans
les mauvais films français à la télé

Law II

JEAN-FREDERIC HUBSCH

LUNCH WITH THE EXPERT – RACHEL BENDAYAN

On March 20, 2013, under the auspices of the McGill Arbitration Society, a group of about 25 students had the pleasure of an informal lunch session with Rachel Bendayan from Norton Rose Canada. A McGill alumna, Ms. Bendayan spoke about her experience in litigation and in international arbitration, as well as her recruitment experiences as a student at the Faculty. Below are a few takeaways from her talk.

Have litigation experience – Many firms have their arbitration groups in their litigation sections. This makes sense, as in both forms of dispute settlement counsel must argue their case and present relevant law and documentation. Indeed, it is important to have litigation experience for arbitration, and doing smaller litigation files as a junior associate develops pleading skills which are a must for international arbitration, which tend to be large-scale and have lots of money at stake.

Arbitration involves a lot of writing – There is an enormous amount of writing in international arbitration (e.g., 100 page briefs). Contrary to regular court proceedings, where there is relatively less paper as judges are familiar with the law at hand, arbitrators must be given everything they need to understand the arguments, any expert reports, and the applicable law. Arbitrators are named from all over the world where different laws are applicable and may not be trained in the law applicable in a given case. And while there are several common frameworks for international arbitration and some arbitrators may have expertise in the applicable law, counsel in an arbitration will want to use briefs to explain law to the others to avoid any potential presumptions or biases.

Interviews are sales pitches – When applying for jobs, such as during course aux stages, Ms. Bendayan's main advice was to remain open to general litigation to help with an eventual move into international law (M&As, arbitration, etc.). Everyone says they want to do international law, so be open to experiencing everything and see what comes of it. Having both common law and civil law remains an advantage. Just remember, the interview is for you to sell yourself. Make sure you get to say everything you want to say about yourself as a selling point.

The McGill Arbitration Society thanks the Law Students Association and the Career Development Office for helping to fund the event.

Law III & PostDoc

IAN DAHLMAN & LUIS G. ROMERO

JUSTICE FRAMED - LAW IN COMICS AND GRAPHIC NOVELS

"I love you, but why must you love the law? 'Tis plain for all to see that she's a whore...that virtuous persons have no need to woo; that villains screw, then studiously ignore."

-Alan Moore, V for Vendetta

It is with great pleasure that we announce the launch of volume 16 of Law Text Culture - an interdisciplinary, trans-continental legal journal based out of the University of Wollongong - entitled "Justice Framed - Law in Comics and Graphic Novels." Comics and graphic novels are gripped by issues of law, legality, order and justice. However legal scholarship, even in the emerging field of law and popular culture, has yet to return the obsession, studiously ignoring the insight and opportunity comics provide for illuminating, developing and critiquing law. The goal of volume 16 was to begin to rectify this villainous oversight, and we feel this fantastic collection of essays, which we had the pleasure of co-editing, has accomplished just that.

We owe a debt of gratitude to the Faculty of Law at McGill and our colleagues for the exceptional support we received. First, the funding provided by the LSA and Dean's Discretionary Fund allowed us to both have a creative submission contest, the winner of which is published in the issue, and procure the necessary licenses to actually reproduce frames from discussed comics in the journal itself. A journal about comics without comics would have been a sad thing indeed; thank you for bringing colour and vibrancy to our pages. Second, many McGill professors served as peer reviewers for the essays in this issue; an immense thank you to Professors Desmond Manderson, Wendy Adams, Frédéric Mégret and Shauna Van Praagh for their time and acumen. A thank you and congratulations also goes out to Professor René Provost for his phenomenal piece "Magic and Modernity in Tintin au Congo (1930) and the Sierra Leone Special Court," a must-read for Tintin and international law enthusiasts alike. Finally, Ian would like to take this opportunity to thank Professors Desmond Manderson and Mark Antaki, who provided invaluable feedback on his piece "The Legal Surrealism of George Herriman's Krazy Kat," which also appears in the volume.

The journal is available freely on the web at http://ro.uow.edu.au/ltc/. Enjoy!

GLOBAL CONFERENCE
ON DEMOCRACY, HUMAN RIGHTS
AND THE FRAGILITY OF FREEDOM

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Democracy and Human Rights: Critical Connections

The Arab Spring: Challenges, Effects and Consequences

Justice, the Rule of Law and Democracy: Protecting Fundamental Freedoms and Human Rights

Democracy and Foreign Policy Roundtable: Human Dignity, Economic Justice and Democracy

Democracy and Human Rights: Understanding China- Keynote Martin Jacques

Borderless Technology and New Movements for Social Change

Listening to Diverse Voices: Expanding Democratic Participation

Pathways Forward: Sustaining Democracy in Turbulent Times

McGill

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For the full conference program visit: http://efchr.mcgill.ca

You are also invited to the conference's **free opening plenary session** on **Thursday, March 21, 2013, 4:00-6:30pm** at the Auditorium of Centre Mont Royal, featuring:

Marina Nemat- Author of *Prisoner in Tehran*
Dr. Yang Jianli - Chinese Political Dissident
Maikel Nabil - Egyptian Political Activist and Blogger

NANCY ZAGBAYOU

CRITICAL RACE THEORY

Critical Race Theory (CRT) was originally a reaction the Critical Legal Studies (CLS) Movement, which severely criticized the five basic tenets of Legal Liberalism: the rule of law, formalism, neutrality, abstraction and individual rights. Although CRT embraced the CLS's skepticism of Legal Liberalism, it aimed to provide a medium to analyze "race and racism in the law and to provide a critical understanding of law." Although, CRT is often misunderstood as an American critical movement, CRT scholars have published extensively in the Canadian Context. This essay analyses the visible "minority concept" from a CRT perspective. The McGill curriculum currently does not include a course on Critical Race Theory, but changes in the legal landscape show the growing importance of race literacy.

+Visible Minority: A necessary legal fiction?

Despite the colorblind ethos prevalent in Canadian society, the often unspoken legacy of discrimination continues to adversely impact 'visible minorities' today. In 2007, the United Nations Committee on the Elimination of Racial Discrimination criticized Canada for it's use of the term 'visible minority' and issued a non-binding recommendation calling for the term to be removed from usage as it allegedly contradicted with the aims and objectives of the International Convention on the Elimination of All Forms of Racial Discrimination ratified by Canada in 1970 . The committee argued that the term 'visible minority' seemed to suggest that whiteness was the normative standard and races differing from this norm were visible, thereby promoting discrimination. The Canadian government responded that it had no plans of changing the standard usage of the term as "'visible minority' [...] is a key component of Canada's anti-discrimination policy" .

The term 'visible minority' is a legal concept found in Canadian legislation and it has no comparable meaning outside of the Canadian context. According to Statistics Canada, the term 'visible minority' is specific to the administration of the Employment Equity Act (Act) and refers to "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in color". The Act, which came into force in 1996, aims to "achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and [...] to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities." The Act, which creates statutory rights outside of the constitutional equality framework, establishes both negative rights protecting members of the fours specific groups against employment discrimination, and positive rights giving members of identified groups preferential treatment in order to improve their employment opportunities and remedy their historical employment disadvantages. Is the concept of 'visible minority' ill suited to refer to the group the legislations aims to protect or is it simply a legal fiction that should instead be evaluated based on how well it achieves its objectives?

The UN criticism of the term seems to echo the critical race theory idea that the law is not neutral, as it perpetuates the marginalization of people of color with its rhetoric of white dominance. The discomfort with the use of a lexicon that seems to promote the racial power imbalances it claims to remedy highlights a larger problem articulated by Jennifer Nedelsky when she explains that "the ongoing problem of defining the term remains". When it comes to questions of race, power and law, the experiential knowledge informed by the personal experiences of the oppressed is often discounted in favor of legal abstractions that often reflect racial hierarchy. Patricia Williams expressed the same sentiment when she stated in a footnote, "I don't like the word "minority" [...] because it implies a certain delegitimacy in a majoritarian system."

Even if the concept of 'visible minority' is a pure legal fiction, something assumed in law to be fact irrespective of the accuracy of that assumption, it is important to remember that the law is speaking to the experience of a particular group to avoid being blind to the negative unintended consequences on the object of the legislation. Canadian critical race theorists have encouraged the use of the term "racialized communities" instead of "visible minorities" in contexts where it considers the term to reflect an erroneous social construct involved in perceptions that persons or groups who share a given ancestry are different and unequal. The deliberate decision of the Canadian government to continue using the term 'visible minority' may be seen as a refusal to acknowledge the validity of the critical race theory criticism or an assertion of national sovereignty by rejecting the scrutiny of an international entity in its internal affairs.

Although the textual argument against using a term that semantically seems to promote a certain racial hierarchy has some merit, it is important to remember that the 'visible minority' concept was established to be used as a tool to achieve employment equity. As Mari Matsuda noted in her talk presented at the Yale Law School Conference on Women of Color and Law in 1988, "it would be absurd to reject the use of an elitist legal system, or the use of the concepts of rights, when such use is necessary to meet the immediate need of [a disempowered constituency]." Although the term 'visible minority' is contested, it would be absurd to forgo the opportunity to use it as a tool to achieve employment equity. Esmeralda Thornhill reiterate this idea when she says, "though in matters of racism and racial discrimination we in Canada have experienced the law too often as a sword of oppression and so seldom as a shield of protection, law nevertheless remains too precious a tool for Black people to abandon".

Remedial measures are important in the Canadian legal context as they serve to address the consequences of a legacy of legal discrimination. The polemic arose because the Act establishes positive statutory rights calling for preferential measures to ensure the employment equity of 'visible minorities'. Critics of preferential measures argue that employment equity for 'visible minorities' creates reverse discrimination against members of the majority group, benefits certain minorities who do not require preferential treatment, devalue the contributions of 'visible minorities' and focus on representation instead of addressing the underlying problem of discrimination. Responding to this argument, critical race scholars argue that in the absence of preferential treatment for visible minorities, white males will continue to benefit from the effects of the original discrimination.

In addition, "formal equality, or a vision of equality premised on equal treatment of individuals, was rejected in favor of a substantive concept of equality in Andrews v. Law Society of British Columbia." Employment equity for 'visible minorities' is justified under substantive equality as "it [is] no longer possible to assume that differential treatment constitutes discrimination and that sameness of treatment constitutes equality [...] as discrimination has to be assessed in terms of the harmful or disadvantaging effects of laws and policies." Further more, the Canadian Charter of Rights and Freedom expressly states in s 15(2) that equal protection under the law (s 15(1)) does not "preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race."

The term 'visible minority' seems to lump together minority groups who continue to be severely disadvantaged and affluent groups of newly immigrants who may not have socially suffered from legacy of discriminatory laws. Nevertheless, these groups are still experiencing the cost of being members of a racialized community in a society that has not done away with white privilege. Although the question of who should be included in the 'visible minority' group is a societal decision, the idea that some groups are reaping the benefits without having bared much of the cost highlights an important limitation of the 'visible minority' concept.

Unlike the American concept of affirmative action, employment equity in Canada does not impose quotas leaving the details of devising preferential measures to the employers thereby mitigating the unintended consequences of the 'visible minority' representation paradigm. Ultimately, "the solution to systemic discrimination in employment cannot consist merely of measures that increase the representation of minorities in the workplace [...], the solution must also include measures designed to change traditional attitudes and stereotypes about the employment of minority groups, whether these attitudes take the form of prejudice, paternalism, or inhibitions."

Speaking to her experience as a 'visible minority', Patricia Williams explained: "I [...] was raised to be acutely conscious of the likelihood that, no matter what degree of professional or professor I became, people would greet and dismiss my black femaleness as unreliable, untrustworthy, hostile, angry, powerless, irrational and probably destitute." Although the term 'visible minority' itself can be seen as reaffirmation of white dominance, proponents of equality rights do not simply see the term 'visible minority' as a necessary legal fiction, but as a tool to combat employment discrimination against 'visible minorities'.

<u>Critical Race Theory at the McGill Law Faculty:</u>

The Critical Race Theory student-initiated seminar was started in the winter term of 2012 by students to signal the importance race literacy and to highlight a need for the faculty to adopt a more comprehensive CRT approach to its legal curriculum. Often, students only encounter critical race theory in a very limited context, usually relegated to one lecture during the Foundations of Canadian Law. Courses like "Feminist Legal Theory", "Law and Poverty" and "Social Diversity and the Law" have also included some CRT elements even thought the inclusion of CRT was left to the discretion of the professor. There needs to be a more integrated and comprehensive approach that does not simply marginalize CRT as one discrete class topic, but rather an ongoing intersectional inquiry that asks: what is the best way to achieve equality in Canadian society for diverse racialized groups? A continued interjection and race literacy in all aspects of law is needed. McGill law faculty's student-initiated seminar on Critical Race Theory is currently being facilitated by Viviane Albuquerque, Rosel Kim, Alexandra Olshefsky, Ngozi Okidegbe, and Nancy Zagbayou.

Aylward, Carol. Canadian Critical Race Theory: Racism and the Law.Winnipeg, MB, CAN: Fernwood Publishing, 1999 p 29 at p30.

National Post, Canada Ready to Spar with UN over visible minorities, July 5 2011 <http://news.nationalpost.com/2011/07/05/canada-ready-to-spar-with-un-over-%E2%80%98visible-minorities%E2%80%99/ >

Government of Canada, Nineteen and twenty report June 2005 – May 2009, International Convention on the Elimination of all forms of racial discrimination < http://www.pch.gc.ca/pgm/pdp-hrp/docs/cerd/rpprts_19_20/19-20-eng.pdf>

Statistics Canada < http://www.statcan.gc.ca/concepts/definitions/minority-minorite1-eng.htm>

Lubomyr Chabursky, "The employment Equity Act: An Examination of its Development and Direction" (1992) 24 Ottawa L Rev at 321.

Jennifer Nedelksy, "Reconceiving Rights as relationship" (1994) 1 Rev. Const Stud at 4.

Patricia J. Williams, "Alchemical notes: Reconstructing ideals from deconstructed rights" (1987) 22 Harv CR-CLL Rev at 404.

Mari Matsuda, "When the First Quail Calls: Multiple Consciouness as Jurisprudential Method. A talk presented at the Yale Law School Conference on Women of Color and the Law, April 16, 1988" (1989) Women's Rts L Rep 11:7 at 8.

Esmeralda M. A. Thornhill, "So Seldom for Us So Often Against Us: Blacks and Law in Canada", Journal of Black Studies (2008) 38:321.

Colleen Sheppard, "Constitutional Equality: Challenges and Possibilities", chapter of a book that has not yet been published at 38.

Ibid at 39.

Canadian Constitution Act, 1982, c 11. Canadian Charter of Rights and Freedoms.

Ibid Chabursky at 18.

Ibid Williams 407.

OVERHEARD AT THE FAC

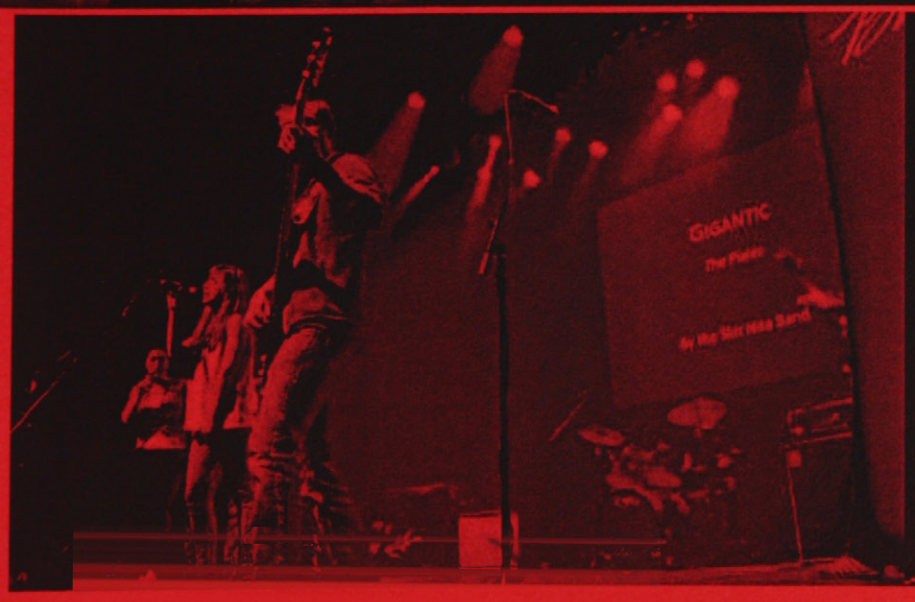
Prof. Moyse, to student who just answered question posed in class: I'm not saying you're wrong... but please, do not mislead the class.

Prof. [REDACTED], en cours de droit international privé : Ce test a 8 critères. N'importe quel test qui a 8 critères est un test qui ne fonctionne pas!

Prof. [REDACTED], toujours en droit international privé : Le Juge LeBel est le nouveau La Forest : mais LeBel est aussi obsédé de prévisibilité que La Forest l'était. Cette approche en 8 facteurs, vous pouvez vous imaginer que le juge LeBel s'arrachait les cheveux!

Me. [REDACTED], at Oral Advocacy Workshop: Having enough copies of your documents at court will kill a lot less trees than an appeal.

SKIT NITE !

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